

**HEARING ON THE NOMINATIONS OF  
LISA P. JACKSON TO BE ADMINISTRATOR  
OF THE U.S. ENVIRONMENTAL PROTECTION  
AGENCY AND NANCY HELEN SUTLEY TO BE  
CHAIRMAN OF THE COUNCIL ON  
ENVIRONMENTAL QUALITY**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON  
ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE  
ONE HUNDRED ELEVENTH CONGRESS**

FIRST SESSION

JANUARY 14, 2009

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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED ELEVENTH CONGRESS  
FIRST SESSION

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**WEDNESDAY, JANUARY 14, 2009**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
*Washington, DC.*

The full committee met, pursuant to notice, at 10 a.m. in room 406, Dirksen Senate Building, Hon. Barbara Boxer (chairman of the committee), presiding.

Present: Senators Boxer, Inhofe, Baucus, Carper, Voinovich, Lautenberg, Isakson, Cardin, Vitter, Barrasso, Alexander, Bond, Klobuchar, Whitehouse, Udall, Merkley.

Also present: Senator Menendez.

**OPENING STATEMENT OF HON. BARBARA BOXER,  
U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator BOXER. The Committee will come to order. We have very important business ahead of us. I thank everyone for being here.

This is the way we are going to proceed, just given the schedule of Senators who are here, like Senator Menendez. So this is the way we are going to proceed.

So this is the way we are going to proceed. I am going to make a 5-minute opening statement. Hopefully Senator Inhofe will make a 5-minute opening statement, and then we are going to go to Senator Menendez, first Senator Lautenberg, then Senator Menendez, to do an introduction. Then we will return here and we will go back and forth. Senator Inhofe and I have agreed if everyone could try to make their opening statement in 3 minutes, but if you need more time I am happy to allow that, up to 4.

So I think we are going to get started. I guess everyone knows, I believe we have a vote at 10:30. So what we will do is we will go until about 10:40, and then recess and come back. So we will start now.

I have looked forward to this day for a long, long time. For me, today marks a turning point for the EPA and the White House Council on Environmental Quality. These two agencies, in my view, have a moral responsibility to protect our families and our communities from environmental threats, from hazards, from toxics. They

have a duty to ensure that the health and safety of the air we breathe, the water we drink, and the planet we all share is healthy.

Today, this Committee has the honor and privilege of conducting the nomination hearing for the leadership of two agencies that are critically important to the health of the American people.

I want to welcome both of our nominees, Lisa Jackson and Nancy Sutley. You will hear a lot more about them and from them as the day goes on.

I am not going to give any background about Lisa Jackson, because that is going to be done by her two Senators, who enthusiastically support her. I want to not only welcome Lisa Jackson, I have had the privilege of discussing many issues with her in my office and I am very excited about working with her.

I do want to welcome Nancy Sutley, who has been nominated to be Chair of the CEQ. Nancy has a long history as a leader in environmental protection in my home State of California. She most recently served as Deputy Mayor for Energy and the Environment for the city of Los Angeles. She was a board member of the Metropolitan Water District of Southern California, and served on the California State Water Resources Control Board. She was a deputy at the California Environmental Protection Agency. So she comes to us with a great depth of experience and a great record of accomplishment on behalf of the people of California.

The State of California has benefited from Nancy's passion for environmental protection, and I am so pleased that she has the opportunity to bring that high level of commitment to the White House.

In the rest of my statement, I want to first talk about the mission of the EPA. It is pretty simple, and I think we have it on a chart, because sometimes we get astray from what the mission is: to protect human health and the environment. That is the mission. Unfortunately, I believe we have seen the agency move in a direction diametrically opposed to the mission it was established to achieve. And that is important. I think all you have to do is look at these headlines and see how astray they have gone. I am just showing you a few, if you can hold them up, because the clock is ticking here.

Blowing smoke, the EPA's rejection of California's proposed tail-pipe emission rules smells like blatant politics; ozone rules weakened at Bush's behest; EPA scrambles to justify action; EPA weakens lead rule after White House intervenes; EPA level of arsenic can lead to cancer; weak limits on soot; EPA has left thousands at risk; as toxic clouds roll by, EPA weakens regulation for chemical storage.

Now, that last one is from New Jersey. The Philadelphia Inquirer is the other one, Contra Costa Times, State College, Pennsylvania, the Washington Post, L.A. Times. It doesn't matter where you live and where you look. This is the record. And this is just a very small part of the record. EPA has a responsibility to protect public health, not to ignore toxic pollution. EPA must rely on science, on science, not on special interests. EPA must listen to its professional staff and independent experts, not lobbyists. Not industry lobbyists, who have a special economic stake.

EPA must ensure that our environmental laws protect our children first and foremost, not ignore the dangerous threats that children face from pollution. I want to say this: when we protect our children, we protect everyone. Everyone.

EPA works for the American people. They don't work for a President, they don't work for us, they work for the people. And in my view, I believe, and obviously there is disagreement on the panel, and they will definitely speak for themselves, they are very good at it, the fact is, I believe the EPA has hurt the American people, made them less safe these past 8 years.

At this hearing, I intend to ask the nominee for EPA a series of questions. And I am looking for a renewed commitment simply to EPA's mission. Nothing more, nothing less.

Like EPA, the White House Council on Environmental Quality has veered off course, in my view. Its fundamental mission is to promote the improvement of environmental quality. The White House Council on Environmental Quality needs to reassert itself as a key advisor to the President on environmental matters. The Chairman of the CEQ needs to bring together all the voices in the Administration for a strong, coordinated environmental policy. I am going to ask the nominee for Chair of the CEQ to make a similar commitment to a new direction at this important White House agency.

The priorities of the leadership in these two agencies must include ensuring our drinking water quality, strong clean air safeguards, protective chemical policies, scientific integrity, transparency, toxic waste cleanup, protecting our natural environment, and addressing the urgent threat of global warming, something that all believe has been neglected. At least some of us believe it has been neglected.

Look, all of us celebrate our grandchildren, and some of us read to them. Probably all of us do. As I reflect on the last 8 years at EPA, I am reminded of the story of Sleeping Beauty. We have an agency and a set of laws that are already in place to do what must be done. But that agency, as it was conceived of by President Richard Nixon, needs to be awakened from a deep and nightmarish sleep.

With new leadership, I am confident we can wake up the EPA and the CEQ to their critical mission: to protect human health and the environment. So again, I am very thrilled to have both of you here and looking forward to your testimony.

Senator Inhofe.

**OPENING STATEMENT OF HON. JAMES M. INHOFE,  
U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. Thank you, Madam Chairman.

First of all, let me say thank you to both Lisa Jackson and to Nancy Sutley. They have been kind enough to visit with me on the phone and talk over a lot of issues and come by and have personal visits in my office, which I assume you have had with other members, too, so you have been very busy. We are now to the point where we can get down to some of the specifics, and as a matter of public record.

The Chair of the Council on Environmental Quality leads the Administration's effort to formulate and execute environmental policy across the Federal Government. It is a critical position, but like many others in Washington, I am quite concerned that the Chair's role is being diluted. I had occasion to do a couple of shows this morning on just exactly what is the role going to be with the Environmental Energy "czar," Carol Browner. Of course, we dealt with Carol Browner when she had the position for which you are nominated, Ms. Jackson, and while we didn't agree on a lot of things, we had a pretty good relationship.

But this is new now, the new "czar" position. I would like to have both of you, in question and answer time, kind of elaborate as to what you think it is going to be. Are you going to be going back where you will be directly dealing, I would say this to Ms. Sutley, with the President, Administration, or is this level in between going to change the previous behavior of that position?

Now, members on both sides of the Capitol and both sides of the aisle are publicly concerned about the outcome of the Massachusetts v. EPA case and with the potential regulation of greenhouse gases under the act. Over the coming weeks I will be issuing a series of letters and information requests in order to better understand if, when and how the new Administration plans to implement this new court-established authority. I would say authority in capital letters, it is authority, not any kind of a mandate.

The CAIR Rule is also at the top of my list of concerns, specifically EPA's ability and timeframe to bring stability back to the tradable allowance market. As the Committee weighs its options on this matter, I am hopeful that the new Administration will resist activists' calls for overreaching, and instead choose to work toward a similar consensus as was achieved during the release of the initial CAIR Rule, the benefits of which were estimated by EPA to be over 25 times greater than their costs.

Having long been an advocate for a more effective and accessible government, I want each of you to fully understand my belief that States and local governments possess unique local perspectives. There is kind of a mentality in Washington that if a decision isn't made here, or a position made here in Washington, it is not worthwhile. I am just of the opposite view. I think particularly the two of you have had experience on that level, and I would hope that you would keep in mind things such as property rights, States' rights, as we progress.

I also have growing concerns about the Superfund program. EPA needs to, I believe, do a better job. Specifically, I am troubled with the current case, the Tronox case, which is an Oklahoma company, that is now filing for Chapter 11 as a result of some cleanup costs. This Committee, for the 14 years I have been on it, has had many experiences with cleanups. We have seen a lot of times people who are responsible to require cleanup are willing to do it themselves, they can do a good job and they can do it a lot cheaper than Government can do it. I think we need to really look at that. I am concerned about that Tronox case.

But also the Tar Creek Superfund sites, I have talked to both of you about that. It is, I believe, not one of the most but the most severe site in the Country. And we have made incredible success



in cleaning it up. We went 30 years not doing anything but spending millions of dollars. Now in the last 6 years, we have it so that we have done most of the work in terms of the relocation of the people. The subsidence was much more serious than we thought it would be. But we do have, we are 90 or 95 percent through with this now. I hope that both of you will work very closely with us on that specific Tar Creek Superfund site.

Then of course we have the ultimate problem of cleaning it up. We haven't even addressed that yet. We are trying to get beyond the point of saving the lives that otherwise could have been lost in some of the subsidence. It ended up being a lot worse. That area had never been mapped before until we got into this thing. So that will be something I want to work very closely with both of you on.

Thank you very much, Madam Chairman.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR  
FROM THE STATE OF OKLAHOMA

Good morning. We are here today to consider the nominations of Lisa Jackson for Administrator of the Environmental Protection Agency and Nancy Sutley for Chair of the Council on Environmental Quality.

The Administrator of EPA implements the agency's mission to protect human health and the environment. Inherent in that charge is the recognition that the health of humans and the environment depends on the health of the economy. The course of action chosen by the next Administrator will indeed determine whether people and resources are reasonably protected or, to the contrary, whether overzealous regulations pull us deeper into economic turmoil.

The Chair of the Council on Environmental Quality leads the Administration's effort to formulate and execute environmental policy across the Federal Government. It's a critical position, but, like many others in Washington, I am quite concerned that the Chair's role has been diluted by the addition of former EPA Administrator Carol Browner as White House climate and energy "czar." The law states that the CEQ chair is to report directly to the President on environmental policy. I sincerely hope that Ms. Browner's new position will not undermine the statute's intentions nor overshadow the Chair's autonomy and judgment. Let me be very clear on this point: The new Senate-confirmed CEQ Chair will be expected to have the full authority to represent the White House on all matters before this Committee.

Both the next EPA Administrator and CEQ Chair will face immediate challenges on some of today's highest profile issues. Of particular concern to me are the incoming Administration's aggressive statements about plans to regulate greenhouse gas emissions under the Clean Air Act. As you know, I have serious concerns about the timing and troubling implications that further regulation could have on our already fragile economy; those concerns are shared by many across the Country.

Members on both sides of the Capitol and both sides of the aisle are publicly concerned with the outcome of the Massachusetts v. EPA case and with the potential regulation of greenhouse gases under the Act. Over the coming weeks I will be issuing a series of letters and information requests in order to better understand if, when, and how the new Administration plans to implement this new court-established authority.

The CAIR Rule is also at the top of my list of concerns, specifically EPA's ability and timeframe to bring stability back to the tradable allowance market. As the Committee weighs its options on this matter, I am hopeful that the new Administration will resist activists' calls to overreach, and instead choose to work toward a similar consensus as was achieved during the release of the initial CAIR rule—the benefits of which were estimated by EPA to be over 25 times greater than their costs.

Having long been an advocate for a more effective, accessible government, I want each of you to fully understand my belief that States and local governments possess unique local perspectives: they are generally best suited to respond to and prioritize constituent needs. It is my firm belief that protecting States' rights and private property rights are of the utmost importance. Unfortunately, the people of Oklahoma and many other States have seen their fundamental liberties unreasonably eroded in the name of environmental protection.

I am most recently troubled by the attempt to exponentially expand the reach of the Clean Water Act under the proposed Clean Water Restoration Act, which Mrs. Browner supports, as well as the push to overturn long overdue, incremental reforms to the Endangered Species Act. I believe that both of these legislative initiatives are an assault on the original statutory intent and an attempt to give Federal bureaucrats authority to make final decisions about local land use; I believe that both are blatant infringements on the private property rights.

As the senior Republican member of this Committee, please know that I intend to do everything possible to oversee and ensure that Federal agencies stop overstepping the authority given to them by Congress. I urge the incoming Administration to afford particular deference to State and local government knowledge, authority and expertise.

I also have growing concerns about the Superfund program: EPA needs to do a better job managing many sites. Specifically, I am troubled to hear that Tronox, an Oklahoma company, has filed for Chapter 11 bankruptcy due to its legacy liabilities. EPA is currently suing Tronox for the cleanup costs at the Federal Creosote Site in Manville, New Jersey. This Superfund site is a prime example of Federal mismanagement.

Finally, I remind you both of my longstanding concern about the Tar Creek Superfund Site. Since the early 1980s, EPA has ranked this site as one of the most severe sites in the Country. We have made tremendous progress over the past number of years to put together a coordinated remediation plan and provide assistance to the residents of the area. I am looking forward to working with you to complete the relocation work very soon and continue to work on the ultimate cleanup of the area.

I sincerely hope that both of today's nominees acknowledge the importance of rebuilding a healthy economy while protecting the environment and human health, and look forward to hearing your perspectives on the issues that will be raised today. Most importantly, I welcome you both to this Committee.

Senator BOXER. Thank you so much.

So as we laid out, we are now going to have Senator Lautenberg and Senator Menendez make their introductory remarks about Lisa Jackson, at which point we will go back to opening statements and we will have 3 minutes a side. Please try to stick to that. And then we will get to Lisa.

After we are finished questioning Lisa Jackson, we will then move to Nancy Sutley. I told her she is in a good position, because we will be a little tired by that time. But Nancy is ready for all questions.

Senator Lautenberg, I know how happy you are about this nomination.

Senator LAUTENBERG. Indeed.

Senator BOXER. Please go ahead.

**OPENING STATEMENT OF HON. FRANK LAUTENBERG,  
U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. Thank you very much, Madam Chairman. I am delighted to be able to greet Lisa Jackson to this Committee.

I know that we have several friends here, visitors from New Jersey. Because few issues are of the importance that a clean environment is to our State, free of toxics, free of pollution. We work very hard at trying to control these things in our State. We come there as a result of a strong industrial past that operated under different rules.

So I am privileged to bring before this Committee Lisa Jackson. We need the kind of bold and decisive, innovative leadership on environment that Lisa Jackson has brought and is going to deliver as the head of the Environmental Protection Agency. We congratulate her on her selection.

Ms. Jackson has dedicated her life to public service. The past 3 years, she served as Commissioner of our State's Department of Environmental Protection. Because of her work, the rest of the Country looks to New Jersey for ideas on how to save energy and protect the environment. She has fought to preserve our State's strong chemical security laws and in contrast to my friend and colleague on the other side of the aisle, I think the States do have a responsibility to develop their own management plans. But I don't discard that which comes from the Federal Government. It can make the difference because it can pay a lot of the bills. And that counts.

Lisa has fought to preserve our State's strong chemical security laws, keep our air clean from pollutants that make people ill and to stop global warming. Now, before Lisa Jackson became DEP Commissioner, she served 16 years with the EPA, first in the Superfund office and then in the regional office. She has directed thousands of employees in New Jersey, and her work at EPA itself will help her bring experience that can successfully manage the EPA's 25,000 employees while remaining a strong advocate for the environment, and while managing the process so that funds are not casually spent but are directed at the place of best result.

Ms. Jackson has no small task before her, as she knows. The challenges facing our environment are serious, numerous and threatening. But Lisa Jackson has proven that she can solve challenges and she can inspire others to follow her leadership. We are pleased that she is joined here by her husband, Kenny, who brings enthusiastic support to Lisa's environmental work. We are pleased to see you.

We have your community members from a town in New Jersey that has been beset by environmental problems, Ringwood, New Jersey. We are pleased to have those folks here. They have been sorely neglected by past EPA activities, declaring sites to be cleaned up when in fact there is toxicity worse than they were at the inception.

Together, these community members and Ms. Jackson are working to clean up the Superfund site that is at Ringwood and make the area safe for families and their children. I am pleased to be joined here by my colleague in the Senate, my friend, Bob Menendez. Bob is someone for whom the environment is a critical issue. And he has been involved from his early days in Government and State government and local government, trying to protect the citizens from our polluted environment.

Bob and I worked together to protect New Jersey's environment, and I know that he is here because he wants to say something about Lisa Jackson. Thank you.

Senator BOXER. Yes, thank you, Senator.

I would like to ask Lisa Jackson's husband, Ken, to stand up so we can recognize him. Because there is always a great man behind a great woman, we know.

[Laughter.]

Senator BOXER. Thank you, sir.

And also we would love to see the community members who came here for this occasion, to rise so we could see you. We welcome you all here. Thank you very, very much for being here.

And now we will turn it over to Senator Menendez, a real fighter for the environment. Thank you for being here.

**OPENING STATEMENT OF HON. ROBERT MENENDEZ,  
U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator MENENDEZ. Thank you, Madam Chairman. To you and Ranking Member Inhofe and all the distinguished members of the Committee, I am proud to join my distinguished colleague, for which the environment is a signature issue for him in his now several decades of service in the U.S. Senate, in presenting to the Committee Lisa Jackson, as she is considered for her nomination to be the next Administrator of the Environmental Protection Agency.

I am confident that the Committee and the full Senate will see that she is eminently qualified for the position and will confirm her for this important post.

Lisa's 16 years of experience at the EPA and her experience leading over 3,000 employees at the New Jersey Department of Environmental Protection have given her the administrative and technical expertise to excel in her new position. But I would also highlight to you her background in science. When we talk about having the sound science for some of these issues, as a chemical engineer, where she developed that expertise in both Princeton and Tulane, I think complement very well her managerial experience.

She will not only be the first African American Environmental Protection Agency Administrator, I believe she will be the best Environmental Protection Agency Administrator we have seen in the history of that department.

Finally, as Senators, we all know that we can't make all the people love all the decisions we make all of the time. There is a famous tee-shirt that Senator Lautenberg and I enjoy that says, New Jersey: Only the Strong Survive. And Lisa Jackson has not only survived there, but she has thrived in developing and implementing policies that have won wide-ranging praise and respect.

Under her watch, New Jersey has implemented strong flood plain and riparian buffer rules, passed cutting-edge global warming legislation, formulated an aggressive energy master plan to meet our State's impressive climate goals, became part of the regional greenhouse gas initiative, upgraded 600 miles of waterways, developed a groundbreaking electronics recycling law. And I would tell the members of the Committee that if you talk to members of the New Jersey legislature, and having served there, I understand how rambunctious that can be, the reality is that she is praised and respected on both sides of the aisle, because she has been willing to work with both sides of the aisle and been not only responsive but responsible.

And I think it is a testament to her that those members of our State who have been victims of the only Superfund site that was ever closed and reopened are here today in testament to the type of leadership that she has exhibited. Those are wrongful decisions of the past that Lisa Jackson has been part of trying to make right.

I think the most important thing to glean from her resume is that she has helped our home State in becoming one of the most environmentally aware and environmentally responsible States in

the Nation. I think that she will bring, I know she will bring that same type of effort, commitment and zeal to this work and to work with all the members of the Senate, on both sides of the aisle, in a way that pursues the Nation's interests.

Thank you, Madam Chairman, for the opportunity to join my distinguished colleague from New Jersey in presenting to you the next Environmental Protection Agency Administrator.

Senator BOXER. Thank you so much, Senator. I know you have many other obligations. We excuse you and we thank you very much for your eloquence.

We are going to go back now, as time permits, to going side to side here. I am going to list the order of arrival, because that is how people will be recognized. On our side, the Democratic side, Klobuchar, Udall, Lautenberg, Whitehouse, Carper and Merkley. On the Republican side, Barrasso, Alexander, Isakson, Voinovich and Bond.

I want to make a note here. We are very pleased to again welcome Tom Udall and Jeff Merkley to the Committee. I know that Senator Inhofe has been very kind in his gracious remarks. We welcome you here.

At the same time, we learned that two of our stars on this Committee, Senators Voinovich and Bond, will be with us for a couple of years, but after that, they have decided to do something else, other than continue to serve in the Senate. And I just want to say, I personally am going to miss both of you. However, as Senator Voinovich said, don't worry, we are going to be here for the next 2 years. So I am not worrying, I know I am going to work with you for the next 2 years.

But it is sort of the sense that two come, two will be here a couple of years, and go. And we keep renewing this Senate. I want to say to the newcomers that these two on the other side of the aisle have been so good to work with. Even when we disagree, and we have done so, we have a really great working relationship. So it is a good role model to follow. So I wanted to pay tribute to both of you.

Senator BOND. Thank you, Madam Chair. I am sure I speak for George when I say we will do all we can to keep it interesting and entertaining. I appreciate the way you have worked with us, even though occasionally we have a slight disagreement.

Senator BOXER. Sometimes. But this Committee has that reputation of working well across the aisle, I say to both Lisa and to Nancy.

So, Amy Klobuchar—

Senator INHOFE. Let me just go ahead and first of all identify myself with your remarks. I haven't really gotten to know our new members as well as I look forward to. We did have breakfast this morning. And what she says is right, we have a diverse set of philosophies represented on this Committee. I will really miss these two guys. Kit and George; George, he and I were both mayors at the same time. He has such a background in understanding these issues, as does Kit. So they will sorely be missed.

But I imagine we will just survive, we will have to do it.

Senator BOXER. We will.

Senator Klobuchar, you have the floor.

**OPENING STATEMENT OF HON. AMY KLOBUCHAR,  
U.S. SENATOR FROM THE STATE OF MINNESOTA**

Senator KLOBUCHAR. Thank you very much. I echo your sentiments, Madam Chair, about our two members here. I have especially enjoyed working with Senator Voinovich on our Inter-parliamentarian Canadian Group. I hope you will continue that for the next 2 years.

I also welcome our two new members as well as Ms. Jackson and Ms. Sutley. I have enjoyed meeting with you and look forward to working with you. I am optimistic about your appointment.

There are really two reasons why I am so excited to welcome our new leadership on these issues to Washington today. First, to quote our former colleague on this Committee, Senator Clinton, I have been very concerned in the last 8 years that the EPA has been operating in an evidence-free zone. I think it is time to change. The American people must know the truth about the water that they drink and the air that they breathe. They must be able to see the information so that they can make decisions themselves, and no more back room peeks by a few Senators at findings by the Environmental Protection Agency. I would like no more redacted testimony as we go forward on climate change and no more testimony before Congress intended to mislead on the facts and the law.

The second reason that I am so excited about our two new nominees is that we need new environmental policies that work hand in hand with our efforts at home-grown energy development and economic growth. I just completed a tour through 22 counties in Minnesota, and I would note, Senator Lautenberg, when I heard Senator Menendez talk about the tee-shirt in New Jersey, where the strong survive, it was 25 below zero in Minnesota last night. So I think we could amend the tee-shirt.

But I saw first-hand in our State the work that is being done where environmental action and energy job creation go hand in hand, from the Port of Duluth, where we have seen an increase in goods coming in with wind turbines, to Morton Construction, the largest wind construction company in the Country, that is located in our State, to Sebeka, Minnesota, where a small telephone company has decided to put together a small wind and small solar package for their customers who live in very rural areas, so that they have backup for power, to Benson, Minnesota, where the dream of a local farmer to grow his own motor fuel has set a new standard for ethanol plants everywhere. The Chippewa Valley Ethanol Plant, which began nearly 20 years ago, is now owned by local farmers and investors.

Recently, just to give you an example of some of the new environmental work going on in this field, Chippewa Valley adopted a new technology to gasify local agricultural waste like corn cobs to power their production facility. To top off their efforts at pioneering energy efficient technology, they even recycle some of their excess product to produce two premium vodkas under the labels Prairie Organic and Shaker. So I invite you visit this ethanol plant and then we can celebrate your confirmation over a shot of vodka—recycled.

As America looks for solutions to our struggling economy, home-grown energy like solar, wind and the next generation of biofuels

will power a new industrial boom in our economy and reduce our imports on foreign oil and reduce environmental pollution. These projects, as you know, create good jobs, and I look forward to hearing your thoughts and ideas about how protecting our environment will help our transition to a 21st century energy economy and create good-paying jobs right here in the United States.

I thank you. I apologize, I will be going in and out, because the Agriculture nomination is going on at the same time. I also serve on that committee. Thank you very much.

Senator BOXER. Thank you so much, Senator.  
Senator Barrasso.

**OPENING STATEMENT OF HON. JOHN A. BARRASSO,  
U.S. SENATOR FROM THE STATE OF WYOMING**

Senator BARRASSO. Thank you very much, Madam Chairman.

Congratulations to both of you. Congratulations to your family and friends and associates who are here. And I want to thank both of you for coming to my office to sit and visit. We had, I thought, very good and productive discussions. I wanted to thank you for all of that.

Madam Chairman, Wyoming is very interested in a number of the environmental issues on which the nominees today will have a significant impact. And the biggest concern of the people of Wyoming, a big concern for the people of Wyoming is sometimes how Federal laws on the books are being used in ways that they were never intended to be used. That affects our people, the water, the land and the species.

So we just want to make sure that we operate in a fashion that is appropriate for the environment but also appropriate for the people who earn their living in that way. In Wyoming we have coal miners, in Gillette we have ranchers in Lincoln County, all fear for their economic future in today's political environment. From their perspective, a number of environmental proposals have arisen which really loom large over their futures, proposals often from people who have never set a foot in a mine or on a working cattle ranch. Ranchers and miners in Wyoming know that addressing climate change through the Clean Air Act is a disaster waiting to happen. Small businesses across Wyoming are concerned that such a move would lead to many unintended consequences that could ripple across the entire economy.

People around Wyoming hear environmental advocates call for turning the Endangered Species Act into a climate change bill. That is something that Congress never intended. And when I talked to a former member of the Senate, Cliff Hanson from Wyoming, who voted for the Endangered Species Act, no idea about this use of the law.

Another issue important to Wyoming is the debate over the true intent of the Clean Water Act. In Wyoming, where the frontier spirit of smaller government and individual liberty are still very sacred traditions, there is overwhelming objection to legislative efforts which would expand the Federal Clean Water Act jurisdiction over all water within the United States. The concern I hear from home is that this legislation would grant the Environmental Pro-

tection Agency and the Army Corps of Engineers virtually unlimited regulatory control over all wet areas within the State.

And the wet areas change in that State. It is winter in the Rocky Mountains. The snow will soon be melting. We will have large, temporary water holes formed on ranches and farms across the State. Under the bill that was introduced, any activity on that land that touches these water holes would require a Federal permit. And that is what has people across the State of Wyoming concerned.

So it is my hope, Madam Chairman, and both of you, that we can all work together in a manner that is reasonable with deference to the legislative branch in terms of the regulations that will come, using laws that have previously been passed in ways that were never intended.

Thank you, Madam Chairman. I encourage the nominees and will get into some of that with the questioning, to make sure that we don't turn laws passed by Congress into something that they were never intended to do. I look forward to that commitment from you and to working with you.

Thank you, Madam Chairman.

[The prepared statement of Senator Barrasso follows:]

STATEMENT OF HON. JOHN A. BARRASSO, U.S. SENATOR  
FROM THE STATE OF WYOMING

Madam Chairman, Wyoming is interested in a number of environmental issues of which the nominees today will have a significant impact.

Most pressing among these concerns is environment advocates in certain quarters of our society who want to use Federal laws on the books in ways they were never intended.

Rather than follow how a law has operated for 20 years, they seek to rewrite the law.

Rewrite these laws in a way that Congress never envisioned.

I fear that the consequences of operating in this fashion will prove disastrous, with little environmental gain to show for it.

Nominees to serve in the highest environmental posts in the land should not approve of these tactics. They should be weary of where this might lead and keep in mind the concerns of rural Americans.

They should advocate that if there are changes in the law that need to be made, they should draft such changes. Send them to Congress so that we can debate them, and the American people can comment on them.

In Wyoming, coal miners in Gillette, and ranchers in Lincoln County, all fear for their economic future in today's political environment.

From their perspective, a number of environmental proposals have arisen which loom large over their futures. Proposals from people who have never set foot in a mine, or on a working cattle ranch.

Ranchers and miners in Wyoming know that addressing climate change through the Clean Air Act is a disaster waiting to happen.

Small businesses across Wyoming are concerned that such a move would lead to many unintended consequences that would ripple across our faltering economy.

One such concern is the possibility of a "cow tax" that would devastate our farmers and ranchers.

This would not only cripple ranchers in inter-mountain States like Wyoming, but across the dairy and cattle operations of the Northeast and Midwest.

They also hear environmental advocates calling for turning the Endangered Species Act into a climate change bill, something Congress never intended.

Energy, construction and agricultural development could be halted in the lower 48 States to protect the polar bears at the North Pole.

In addition, some have speculated that any Federal action could be subject to a new standard: Does the activity contribute to global warming and therefore affect the polar bears?

Another issue important to Wyoming is the debate over the true intent of the Clean Water Act.



In Wyoming, where the frontier spirit of smaller government and individual liberty are still sacred traditions, there is overwhelming objection to legislative efforts which would expand the Federal Clean Water Act jurisdiction over all water within the United States.

The concern I hear at home is that this legislation would grant the EPA and the Army Corps virtually unlimited regulatory control over all wet areas within a State. I have serious concerns on how this bill will affect my home State.

There are significant unintended consequences of this legislation that will lead to absurd results in Wyoming.

It is now winter in the Rockies.

As the snow melts in spring, large, temporary water holes are formed on ranches and farms across the State.

Under this bill, any activity on that land that touches these water holes would require a Federal permit.

Ranchers who use stock water ponds for watering livestock would be required to obtain a Federal permit before any upgrades or modifications to the pond occur.

Let's talk about the larger issue for Westerners across the spectrum—the water shortage in the West.

The West is growing, but the Rocky Mountain West never has all the water it needs.

The Clean Water Restoration Act bill filed last year will needlessly delay construction or repair of pipelines, ditches, canals, diversion structures and wells with more permitting requirements.

Delays in providing for water delivery not only hurt our citizens, it also hurts endangered species who need that water as part of habitat conservation plans and recovery programs across the West.

We are in the midst of tough economic times across the Country.

As we debate an economic stimulus package meant to pump Federal funds in to rebuild bridges and roads, let us be mindful what the impacts these “re-interpretations” of the environmental laws will have in speeding those projects along.

We must not allow any stimulus investments to be needlessly blocked by bureaucratic red tape and never ending litigation.

Let us not reverse any gains made by such stimulus efforts and further drag our economy down.

It is my hope that the nominees will work in a manner that is reasonable, with deference to the legislative branch, and in the light of day to ensure our constituents are treated fairly.

Well funded special interests from urban areas can bring a lot of political pressure to bear on decisions affecting all Americans.

I encourage the nominees to stand up to these political pressures and say “no” to turning laws passed by Congress into something that they are not.

I look forward to your affirmative commitment.

Senator BOXER. Thank you.

I just want to, when we talk about differences on this Committee, you just saw one. Because the vast majority on this Committee believe that the Clean Air Act absolutely has a relevance to carbon dioxide. It is not only in the law, but the Supreme Court ruled that.

So I agree, let's not go out and look for new ways, let's do what the law requires. But the fact that some people are still saying that the Clean Air Act doesn't cover carbon means they either refuse to accept the Supreme Court's decision or they didn't read the Clean Air Act or if they did, they certainly didn't see the words.

But that is the kind of thing you will face here. We really have very big differences. But we care about each other and we respect each other. But that is the kind of thing you are going to see here. And I think this statement by Senator Barrasso shows that very clearly, so you know what you are getting into here.

So you are not going to make everybody happy, that is for sure. You won't be able to. Because if you do, it means you are doing nothing, and I know both of you want to do something. So I wanted to make that case.

Now, we have a vote on, and what we are going to do is, when Tom Carper comes back, I am going to give him the gavel. We will complete the opening statements, so you can go, vote, come back. But next on our list is Tom Udall.

**OPENING STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM THE STATE OF NEW MEXICO**

Senator UDALL. Thank you, Madam Chair, and thank you today for the very warm welcome. Let me say to Senator Bond and Senator Voinovich, we are going to miss your experience.

Ms. Sutley and Ms. Jackson, you come to this hearing with strong recommendations from President-elect Obama and other members of his transition team. I look forward to hearing from you and learning about your ideas to protect human health and the environment. President Obama has bold plans for addressing the major environmental issues of this century. His vision of a strong economy that does not compromise environmental and public health is inspiring, and I look forward to working with the new Administration on energy efficiency, global warming, developing green jobs that bolster the economy and ensuring a healthy planet for generations to come.

Ms. Jackson, I am anxious to hear more about your extensive work on brownfields, contamination remediation and industrial compliance enforcement in New Jersey. And Ms. Sutley, I look forward to hearing more about your efforts to clean the Los Angeles air, green the city and protect California's water resources and water quality. You both have extensive experience to offer our Nation and the new Administration, and I congratulate you on your nominations.

Thank you, Madam Chair.  
Senator BOXER. Thank you.  
Senator Bond.

**OPENING STATEMENT OF HON. CHRISTOPHER "KIT" BOND,  
U.S. SENATOR FROM THE STATE OF MISSOURI**

Senator BOND. Thank you, Madam Chair, and welcome, Ms. Jackson and Ms. Sutley.

I happen to agree with the four on the Supreme on the Clean Air. So there are differences, we will work out the policies.

But the point I want to make is Missourians treasure their environment and natural resources. Our Ozark Mountains hold countless wonders, our majestic caves and our pristine lakes to hardwood forests. We have great rivers. The Missouri and the Mississippi run through our State. Our rich soil supplies everything from corn and soybeans to rice and cotton.

I want to protect these natural resources. I was co-author of the Acid Rain Trading Provision in the Clean Air Act Amendments, so we got that done. So I have worked on these things. I have worked on many things that can clean up the environment. We have lots of projects that are going on that can clean up the water, prevent erosion. We are proud of the progress we are making and that we are going to continue to make.

But we need to protect our families. They provide the soul of our churches, the heart of our communities, the brawn of our cities.

And it means not only protecting their health, but their ability to provide for themselves. And we are suffering right now, as people are across the Nation. They are facing housing crises to job loss. And the budget is not going as far to provide housing, food, higher education and health care.

That is why we support protecting the environment, but protecting family budgets and worker payrolls, doing it so it works. That means, for example, protecting Missouri families and workers from climate change proposals that would raise energy costs by \$6.7 trillion that we debated in here last year. It is not that Missouri does not want to cut carbon emissions, we are supporting zero carbon nuclear power. We need to proceed on that. We are producing low-carbon biofuels and want to get even more from cellulosic ethanol to expanded biodiesel.

We want clean cars. We make batteries that can run those cars. We want clean coal technology, solar and wind power. But we can't support plans pushed by Northeast and West Coast States that hit coal-dependent Midwest manufacturing jobs hard. We are potentially looking at a devastating depression. We can't support plans that raise the price of gasoline \$1.50 a gallon, or support plans to increase regulation and permit costs to livestock operations, programs originally intended for chemical spills or big refiners. Agricultural producers, farmers are facing problems.

I would urge you to take your new responsibilities to heart. What may have worked in Trenton, New Jersey may not work in New Madrid, Missouri; what may be acceptable in San Jose, California may not be acceptable in Carthage. We want to find a middle ground. If you are willing to work toward that common ground in a bipartisan manner, you will certainly have my assistance, and I wish you both well.

[The prepared statement of Senator Bond follows:]

STATEMENT OF HON. CHRISTOPHER "KIT" BOND,  
U.S. SENATOR FROM THE STATE OF MISSOURI

Madam Chairman, thank you for holding this hearing today on the nominations of Lisa Jackson to be Administrator of the Environmental Protection Agency and Nancy Sutley as Chairman of the Council on Environmental Quality.

Ms. Jackson, welcome, and welcome to you, Ms. Sutley.

Missourians treasure their environment and natural resources. Our Ozark Mountains hold countless wonders, from our majestic caves and our pristine lakes to our hardwood forests.

Great rivers such as the Missouri and the Mississippi run through our State, and our rich soil supplies everything from corn and soybeans to rice and cotton.

In wanting to protect these natural resources, we also need to protect our families. Our families provide the soul of our churches, the heart of our communities, and the brawn of our cities.

In Missouri, protecting our families means not only protecting their health, but also their ability to provide for themselves.

Missouri families are suffering right now. Missouri families face foreclosure from the housing crisis and recession job loss.

The Missouri family budget is not going as far as it needs to provide housing, food, higher education and healthcare.

That is why while Missouri supports protecting the environment, it also supports protecting family budgets and worker payrolls.

That means, for example, protecting Missouri families and workers from climate change proposals that would raise energy costs by \$6.7 trillion.

It's not that Missouri does not want to cut carbon emissions—we support zero carbon nuclear power, low carbon biofuels and clean cars, clean coal, solar and wind power.

But we cannot support plans pushed by Northeast and West Coast States that will hit coal-dependent Missouri and Midwest manufacturing jobs especially hard.

We cannot support plans that will raise the price of gasoline \$1.50 per gallon, or kill hundreds of thousands of jobs.

Neither can we support plans to increase regulation and permit costs for livestock operations, especially from programs originally intended for chemical spills or big refiners.

Agricultural producers are facing a credit crunch too. A drop in production because farmers cannot get credit will also hurt families who will face higher food prices.

Likewise, maintaining renewable fuel production is vital to preserving the investment Missouri made in clean fuel.

I tell you these things because I want both you and Ms. Sutley to succeed, and I want to work with you to protect the environment.

But I urge you to take your new national responsibilities to heart.

What may have worked in New Jersey may not work in New Madrid, Missouri. What may be acceptable in California may not be acceptable in Carthage, Missouri.

But if you are willing to listen to middle-America, if you are willing to find common ground, if you are willing to work in a bipartisan manner, you will have help from this Senator from Missouri.

Thank you.

Senator BOXER. Thank you, Senator, very much.

So here is, you know, here is another difference that you will find, a very fair difference with some colleagues believing that as you move to protect the environment, in many cases, you hurt the economy. Others of us believing that as we look at the past, and I go back to when I served on the local air quality board, when you move forward to protect the environment, you create jobs. And we do have this respectful difference. Again, seeing it today gives you a sense of where colleagues are coming from.

So here is what we are going to do. I have given the gavel to Senator Carper. He is going to make his opening statement. As members come back in who haven't given statements, they will do that. And as soon as I get back, we will then go to your, finally, to get to your opening statement.

Senator Carper, thank you so much for rushing back in.

**OPENING STATEMENT OF HON. THOMAS R. CARPER,  
U.S. SENATOR FROM THE STATE OF DELAWARE**

Senator CARPER [presiding]. My pleasure. Thank you, Madam Chair. Welcome to our witnesses. To Lisa Jackson, welcome back. You are no stranger here. We are delighted that you have come back and we are delighted that you have returned as the nominee to be Administrator for EPA.

Ms. Sutley, my recollection is that this is may be the first time you have been before this Committee, at least during the time that I have been here. We are pleased also with your nomination and are delighted to have this opportunity first, to meet with both of you in my office earlier this week and now today to talk with you in this more public setting.

I am going to say some fairly critical things about the Bush administration. Before I do that, I want to mention a thing or two that they have done that I warmly endorse. We have done a fair amount of work here on this Committee on trying to reduce diesel emissions. And I think one of you is aware of that. We have had a great partnership in this Committee on that, and the Administration has done a good job. Also, not just with diesel emission reduction, but also offshore diesel emissions.

However, for the last 8 years, the Bush administration has not provided the information we need on some of the biggest environmental challenges of our time: global warming, energy independence, cleaning up our Nation's air. But beyond just refusing to do its part, the Administration has also held up any Federal regulations on climate change, despite the Supreme Court's ruling that the regulation of carbon dioxide is required under the Clean Air Act. The D.C. Circuit Court of Appeals has had a field day beating on the Bush administration's fossil fuel emissions regulations, and rightly so.

The Courts' decisions have sent the EPA back to the drawing board to rewrite the rules that reduced sulfur dioxide, nitrogen oxide and mercury emissions. So we start this 111th Congress pretty much where we were 8 years ago, with no meaningful Federal regulations to clean up our dirtiest fossil fuel power plants. And while we have discussed and while we have waited for the Bush administration to act, our Nation has been left all too often breathing our dirty air. And we can no longer afford inaction on climate change or on air pollution.

Starting today, here in this Committee, we must send the right signals to industry that will impact their decisions tomorrow and in years to come. Quite simply, how we address many environmental issues today will directly impact future generations. The fellow who was before us a week or so ago, New York Times columnist and author Tom Friedman, who sat right where you are sitting, Ms. Jackson, said it is not just lighting up our house, it is about lighting up our future. Unfortunately, the new EPA Administration and CEQ chair must address a host of problems at the same time our Country faces its worst economic crisis in decades.

With that in mind, we need leaders who can build alliances, who can work with Congress to help us determine the path forward that both strengthens our economy and as Senator Boxer and others have alluded to, strengthens our economy and protects our environment. We can walk and chew gum and we need to do that in this instance as well.

I can think of no one more qualified and ready to lead the Environmental Protection Agency and the Council on Environmental Quality during these challenging times than the two nominees before us today. Ms. Jackson and Ms. Sutley, you are both principled, pragmatic advocates for environmental and energy issues, both present strong resumes at the State and Federal level and with an especially good track record when it comes to cleaning our air.

Ms. Jackson and I both come from States that are at the end of the tailpipe, the Nation's tailpipe. The bulk of air pollution in States like ours comes from emissions generated by power plants in other States. It harms our health, inhibits our States' economic activity, but we have no control over the sources of this pollution.

As Chairman of the Senate Subcommittee on Clean Air and Nuclear Safety, I especially look forward to working with Ms. Jackson and Ms. Sutley on developing stronger air quality regulations on our Country's aging fleet of fossil power plants.

So I am going to put it simply, continued inaction on clean air in our legislation means that tens of thousands of Americans will die prematurely from lung-related diseases in our States. Inaction

means that thousands of children who would have been born healthy will be born with brain defects from mercury poisoning.

We cannot afford to ignore the other pollutants while we address climate. So Ms. Jackson, I am delighted to say that Ms. Jackson shares my vision, a vision a number of us hold, of developing a comprehensive national approach to slashing harmful emissions from power plants. I hope she continues to share this concern.

Both Ms. Jackson and Ms. Sutley have been very active on climate change and clean energy issues, as we know. We look forward to hearing more about Ms. Sutley's and Ms. Jackson's experience and lessons learned as they look to drafting economy-wide climate legislation.

In closing, we are talking about climate change mitigation, we cannot forget the transportation sector. The transportation sector, I think, is responsible for some 30 percent of greenhouse gas emissions in our Country. Any climate change strategy that we develop must also require substantial reductions from our transportation sector, which means more fuel-efficient cars, cleaner-burning fuels as well as convenient, reliable alternatives to driving.

I am going to ask unanimous consent to include the rest of my statement for the record, and now turn to recognize here for his opening statement our colleague, Senator Alexander.

[The prepared statement of Senator Carper follows:]

STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR  
FROM THE STATE OF DELAWARE

For the past 8 years, the Bush Administration has not provided the leadership we need on some of the biggest environmental challenges of our time—global warming, energy independence and cleaning up our Nation's air.

But beyond just refusing to do its part, the Administration has also held up any Federal regulation on climate change—despite the Supreme Court ruling that the regulation of carbon dioxide is required under the Clean Air Act.

The D.C. Circuit Court of Appeals has had a field day beating up the Bush Administration's fossil fuel emissions regulations—and rightly so. That court's decisions have sent the EPA back to the drawing board to rewrite the rules that reduce sulfur dioxide, nitrogen oxide and mercury emissions.

So we start this 111th Congress pretty much where we were 8 years ago—with no meaningful Federal regulations to clean up our dirtiest fossil-fuel power plants. And while we wait for the Bush Administration to act, our Nation is left breathing dirty air.

We can no longer afford inaction on climate change or air pollution.

Starting today, here in this Committee, we must send the right signals to the industry that will impact their decisions tomorrow and in years to come.

Quite simply, how we address many environmental issues today will directly impact future generations. As New York Times columnist Thomas Friedman said: "It's not about just lighting up our house, it's about lighting up our future."

And unfortunately, the next EPA Administrator and CEQ Chairman must address a host of problems at the same time our country faces its worst economic crisis in decades.

We need leaders who can build alliances, work with Congress, and determine a path forward that both strengthens the economy and protects the environment.

I can think of no one more qualified and ready to lead the Environmental Protection Agency and the Council of Environmental Quality during these challenging times than Lisa Jackson and Nancy Sutley.

Ms. Jackson and Ms. Sutley are both principled and pragmatic advocates for environmental and energy issues. Both with strong resumes at the State and Federal levels, and with an especially good track record when it comes to clean air.

Ms. Jackson and I both come from States that are at the end of what I like to call "the Nation's tailpipe." The bulk of air pollution in States like Delaware and New Jersey comes from emissions generated by power plants in other States. It

harms our health and inhibits our States' economic activity, but we have no control over the sources of this pollution.

As Chairman of the Senate Subcommittee on Clean Air and Nuclear Safety, I especially look forward to working with Ms. Jackson and Ms. Sutley on developing stronger air quality regulations on our Country's aging fossil fuel power fleet.

Let me put it simply: Continued inaction on clean air legislation means that tens of thousands of Americans will die prematurely from lung-related illnesses.

Inaction means that thousands of children, who would have been born healthy, will be born with birth defects from mercury poisoning.

We cannot afford to ignore the other pollutants while we address climate.

So Ms. Jackson shares my vision of developing a comprehensive, national approach to slashing harmful emissions from power plants and I hope she continues to share this concern.

Both Ms. Jackson and Ms. Sutley have been very active on climate change and clean energy.

I look forward hearing more about Ms. Sutley's and Ms. Jackson's experiences and lessons learned as we look to drafting an economy-wide climate legislation.

When talking about climate change mitigation, we cannot forget the transportation sector.

The transportation sector is responsible for about 30 percent of greenhouse gas emissions in the United States. Any climate change strategy we develop must also require substantial reductions from our transportation sector. This will mean more fuel efficient cars and cleaner burning fuels, as well as convenient, reliable alternatives to driving.

But if we are asking the car companies and oil companies to contribute to the solution, we must require the same of ourselves by improving our Nation's transportation systems. I hope that Ms. Jackson and EPA will work closely with the Department of Transportation to ensure that this area is not overlooked in any developing climate initiative. In fact, I hope this new administration views the Department of Transportation as a key player on its climate and energy team. I believe Ms. Sutley can help facilitate these conversations.

Ms. Jackson and Ms. Sutley, you have been nominated to serve at an historic time. The opportunities you will have to shape the future of our Nation's environmental policy are truly monumental. And I have confidence that you can, and will, rise to the challenges presented to you. Thank you.

**OPENING STATEMENT OF HON. LAMAR ALEXANDER,  
U.S. SENATOR FROM THE STATE OF TENNESSEE**

Senator ALEXANDER. Thank you, Senator Carper. Congratulations, Ms. Jackson and Ms. Sutley, on your appointments. I have enjoyed our visits. I look forward to working with you on this Committee, hopefully, and on the Appropriations Committee, where we will be working together.

I have three things that I would like to mention to you, all of which we discussed, and maybe you will want to say something about them in your hearing. One is, Senator Carper and I have worked together on this issue quite a bit over the last 6 years, he before that. We need a new CAIR Rule and we need a new rule on mercury, and they need to be, we need them soon, because it affects a lot of States, and they need to be appropriately strong.

It is impossible in Tennessee for the communities of Knoxville, Chattanooga, for example, to meet their attainment standards so they can attract industries like the Volkswagen plant if we don't have strong national standards about sulfur, nitrogen and mercury. So that is No. 1.

No. 2, in your discussions about the goal of dealing with climate change, and I am one Senator who has had a cap and trade carbon bill in ever since I have been a Senator, I hope you will focus on carbon-free solutions and be careful about what we often call renewable solutions. Because they are not really renewable solutions, they are just wind. Now, wind may be fine for offshore or in Min-

nesota or some places. But for example, in Tennessee, the estimates are that if we had all the wind power we could muster, which would mean putting 800 or so of these big turbines on our ridges, interfering with our views of the Smokies, which I would rather not see, it would only supply 1 percent of our electricity. Yet we are now 40 percent carbon-free because of nuclear and hydro power and trying to move that number up. California, as an example, is 50 percent carbon-free. So Tennessee is doing pretty well in the region, and I hope that you will think about that.

In addition, as you think about policy to spend money, keep in mind that subsidies for wind are 27 times greater per megawatt hour than subsidies for all other forms of renewable energy, and that is before whatever the stimulus bill does.

Finally, when you deal with climate change, I would suggest legislation that focuses on smokestacks, tailpipes, and gives all the money collected from cap and trade back to the people. I think that is simpler, I think it is less expensive, and the cost is something Congress can consider. I have a headline from the Tennessean showing that 30,000 people in the Nashville area can't pay their electric bills on time already, and TVA has some of the lowest electric bills in the Country.

So I would take the step of focusing on cap and trade for power plants, President-elect Obama's standards, and I will wind up with this, because I see my time is up. A carbon-free fuel standard, which this Committee adopted at my amendment when we debated this last year, which would do a better job than a cap and trade on fuel. And that would be two-thirds of the carbon produced by the Country. And then take all the money that comes in from a cap and trade and give it back to people who are having a hard time paying their electric bills because of the inevitably increased prices of electricity that will come from carbon legislation.

I look forward to working with you and I thank the Chairman-designate for the time.

Senator CARPER. You are quite welcome. Thank you for your statement.

I think Senator Cardin is next. He has gathered the time, he tells me, from a bunch of other Senators who are not here, and he is recognized for 45 minutes.

[Laughter.]

**OPENING STATEMENT OF HON. BENJAMIN CARDIN,  
U.S. SENATOR FROM THE STATE OF MARYLAND**

Senator CARDIN. They are not here to object, so I figured it worked out well.

Mr. Chairman, thank you very much. I am very much looking forward to this confirmation hearing for Lisa Jackson and Nancy Sutley to assume their roles in the Obama administration. I welcome both of you here and thank you, thank you for being willing to serve. Thank you for your families, for putting up with the inconvenience of the responsibilities you are about to assume. We very much appreciate your willingness to continue in public service.

I have had the chance to talk with both of you in my office. So you know the first issue I am going to bring up, and that is the Chesapeake Bay. The Federal partnership in the Chesapeake Bay



has been extremely valuable for promoting the appropriate type of remedial action in the Chesapeake Bay, and has been a real model for our Nation. What I urged in our private discussions and I will continue to raise today is that we need leadership from both of you. We need leadership from this Administration to strengthen the partnership between the Federal Government and the Bay partners in order to be able to move forward.

And we are going to be asking you to do that. That requires leadership and adequate funding. And we are going to be talking about both. We want to be result oriented. We don't want to see press releases, we want to see results in the cleaning up of the Bay. And we look forward to working with both of you in that regard.

As I requested in our meetings, I would invite you to join me in seeing first-hand what is happening on the Bay. I thank you for your willingness to make that a priority of your agenda.

Ms. Jackson, you and I discussed also the critical problems of polluted runoff from stormwater. Stormwater is the major challenge facing the Bay and many other waters of the United States. Non-point pollution is the least regulated source of pollution, and the only pollution sector still growing in the Bay watershed.

In my meetings with Ms. Sutley, we also discussed the need to make Bay cleanup a priority across all Federal agencies. We talked in detail about the immediate attention to a long-simmering dispute over environmental cleanups at military installations. I feel confident that Nancy Sutley will ensure that cleanup of Federal facilities will be just as stringent and receive the same oversight that we require from the private sector.

Our communities of Fort Meade and Fort Dietrich can be sure that the environmental experts at EPA will have the ultimate responsibility for cleanup standards and methods. Our military families and local communities who support our installations deserve no less.

During the questioning, I will get into some other issues that we had a chance to talk about. I do look forward to this hearing, but more importantly, I look forward to your leadership on environmental issues for our Nation.

[The prepared statement of Senator Cardin follows:]

STATEMENT OF HON. BENJAMIN CARDIN, U.S. SENATOR  
FROM THE STATE OF MARYLAND

Good morning.

We are meeting today to consider nominees for two of the highest environmental positions in our Nation. I have had the opportunity to meet with both nominees to discuss their visions for their respective offices. Based on my discussions, I have renewed faith that the Chesapeake Bay restoration effort under the Administration of President Obama will remain a Federal priority that deserves renewed attention and resources.

During our meetings, I invited both Lisa Jackson, nominee for EPA Administrator, and Nancy Sutley, nominee to head the Council on Environmental Quality, to visit Maryland so they can witness the beauty and the challenges of the Chesapeake Bay firsthand. I look forward to the first of many official visits a bit later this year.

I was encouraged by our conversation about the need for new leadership and strengthened regulatory oversight of the Chesapeake Bay restoration effort. Transparency and results should be the hallmark of the new EPA leadership team. The last 8 years of failed leadership are about to end. Positive spin is about to be replaced by a focus on real accomplishments.

Ms. Jackson and I also discussed the critical problem of polluted run-off from stormwater.

Stormwater is the major challenge facing the Bay and many other waters of the United States. Non-point pollution is the least regulated source of pollution and the only pollution sector still growing in the Bay watershed.

In my meeting with Ms. Sutley, we also discussed the need to make Bay cleanup a priority across all agencies of the Federal Government.

We also talked in detail about the need for immediate attention to the long-simmering dispute over environmental cleanups at military installations. I feel confident that Nancy Sutley will ensure that cleanup at Federal facilities will be just as stringent and will receive the same oversight that we require of the private sector.

Our communities of Fort Meade and Fort Detrick can be sure that the environmental experts at EPA will have ultimate responsibility for cleanup standards and methods. Our military families and the local communities who support our installations deserve no less.

I look forward to hearing more from these two impressive nominees at today's hearing, to hosting them at meetings in Maryland, and to a robust working relationship in the years ahead.

Senator CARPER. Senator Cardin, thanks for that statement. Under the early bird rule, I believe Senator Isakson is next, then Senator Whitehouse. Then we will come back to Senator Voinovich.

**OPENING STATEMENT OF HON. JOHNNY ISAKSON,  
U.S. SENATOR FROM THE STATE OF GEORGIA**

Senator ISAKSON. Thank you, Mr. Chairman.

I want to first echo the remarks of Chairman Boxer and others regarding Senator Voinovich and Senator Bond, two great individuals from whom I have learned so much in the years I have been in the U.S. Senate. They will be appreciated in the next few years and missed desperately after that.

And welcome, our two new members.

I have not had the privilege of talking with Ms. Jackson yet, however, I have read her resume, and she is eminently qualified. I have one inside information on her, she graduated from Tulane University summa cum laude. I am still paying off my son's tuition from Tulane 20 years later. That is a great institution, and she is a very significant contributor to that institution as an advisor.

And with a master's from Princeton, she obviously has the academic acumen to do it, and management responsibilities in New Jersey certainly qualify her. My comments to her will simply be this. My interest is in an environmentally friendly regulatory body that uses common sense and recognizes what is going on. One of the unintended consequences of regulation is sometimes it doesn't work. A prime example in my State, in Catoosa and Walker Counties, where we are in non-attainment by EPA and have been, but have no industry to speak of. They happen to be on an interstate highway. But unfortunately, not because it is a bad place, it is a good place, but they are immediately adjacent to Chattanooga, Tennessee, which does have a lot of manufacturing, and they are downwind.

So they are in non-attainment, which restricts them greatly, but they are not the generators of it nor can they do anything about the pollution they suffer from that lowers the air quality standards. There are ways to find flexibility, I think, in those standards, to work with communities like that who end up being punished

through no fault of their own because regulations don't recognize the natural occurrence of things that have happened.

Second, the potential regulation of greenhouse gases by the Department has included some conversation about naturally occurring methane from livestock going into the atmosphere, resulting in a taxation on livestock. On behalf of my Georgia farmers, I would just add that there is nothing they can do about Mother Nature and cattle. I think we have to be very careful when we start regulating naturally occurring elements, that we not turn it into a tax once again that they can't do anything about.

But you are a very accomplished lady. I had the privilege of working with Carol Browner and I would close with this. Ms. Browner was a very good regulator. I didn't agree with her all the time, but she had common sense and still does. We were talking the other day. She, in Atlanta, which has been in non-attainment and had a lot of difficulty, a lot of problems for a long time, she recognized back in 1999 and early 2000 that a waiver we had asked for for the construction of a bridge that would transcend the interstate system in downtown Atlanta would actually contribute to lessening air pollution from automobiles. And even though it was in non-attainment, she granted that waiver. And today, air quality standards are better, because we waived a regulatory prohibition because it made sense to put in a bridge.

Ms. Sutley, I was proud to be able to talk to you yesterday. I have only one thing to repeat from what we said yesterday, and that is that Mr. Connaughton, who has been the negotiator for the White House and the catalytic agent in terms of the Georgia, Florida and Alabama water wars, we have been 19 years with a broken-down water compact and the Federal courts have been regulating drinking water and ACT and ACF for some time. It is very important in this Administration that we find a way to get the three States together to come up with a working water plan. Your experience from California should be very helpful, because you understand the issues of water.

And I hope the Administration, which in the campaign kind of sided with Florida, but I understand the politics of that, will understand we have three States, all of which need to drink water, all of which need to have it protected. If you can be a catalyst, as Mr. Connaughton has tried to do, to bring them together, I will be eternally grateful to you.

Thank you, Mr. Chairman.

[The prepared statement of Senator Isakson follows:]

STATEMENT OF HON. JOHNNY ISAKSON, U.S. SENATOR FROM THE STATE OF GEORGIA

Thank you, Madam Chairman.

At the outset I would like to pay tribute to our colleagues Senator Voinovich and Senator Bond, two outstanding Senators and members of this Committee who have announced their retirement. Both of them are former Governors of their States, and have spent their lives doing what they thought was in the best interest of the people they represented. The Senate and Nation are a better place because of their service.

This hearing is a good opportunity for us to learn about the nominees' vision for the EPA and the Council on Environmental Quality. I was disappointed that I wasn't able to have a substantive meeting with Ms. Jackson prior to this hearing, however I understand that her staff is working to try and schedule such a meeting. I was able to have a brief call with Ms. Sutley yesterday, and again understand that her staff is working toward scheduling a more substantive meeting, which I look forward to.

I have a number of issues I am eager to hear from the nominees on. Starting with Ms. Jackson, Catoosa and Walker Counties in my State were put into non-attainment by EPA, even though EPA admits that the source of the pollutants that put them in non-attainment are not in these counties. I am interested in hearing from her if the EPA under her leadership will punish rural communities who have air quality issues that are no fault of their own. If they will continue this practice, what steps she will take to ensure that these communities are given the tolls they need to come out from under this designation.

Another issue I will want to hear from Ms. Jackson about relates to the EPA plan to regulate greenhouse gases such as methane, nitrous oxide and carbon dioxide, under the Clean Air Act that would result in new taxes on livestock operations. This is of significant interest to me and the farmers in my State.

The EPA proposal in response to a Supreme Court decision in *Massachusetts v. EPA*, which dealt with a petition to regulate automobile emissions, was to make a finding that any or all greenhouse gases endanger public health. Once an endangerment finding is made, EPA cannot restrict its regulations only to auto emissions, and other Clean Air Act provisions are automatically triggered, such as the Title V permit program.

Title V requires that any entity that emits, or has the potential to emit, 100 tons of a regulated pollutant must acquire a permit in order to continue to operate. Livestock operations emit more methane and nitrous oxide than carbon dioxide and both are alleged to be more potent than carbon dioxide.

States administer Title V permits and permit fees vary, although the EPA sets a presumptive minimum rate for fees. For 2008–2009, the EPA rate is \$43.75 per ton of emitted GHGs. Using EPA data and USDA statistics, American Farm Bureau estimates the fees could be \$175 per dairy cow per year, \$87.50 per head of beef cattle a year and about \$20 per hog a year.

Livestock and dairy producers would not be able to absorb the costs associated with this plan, and many of them would be forced out of business because farmers are usually price takers rather than price makers.

Implementation of the EPA's proposed rule could result in less livestock production in the U.S. while also helping cause an increase in the importation of foreign livestock.

Finally, small water systems in Georgia and across the Nation are struggling to comply with several EPA drinking water rules because of unfunded mandates imposed by the Federal Government. I cosponsored Senator Inhofe's bill to reauthorize the technical assistance provision of the Safe Drinking Water Act which expired in 2003. This bill provided much needed assistance to community water systems across the country that face several very technical and difficult Federal drinking water regulations. I am interested in hearing from Ms. Jackson whether she will prioritize rural water funding within EPA's budget because small communities depend on that program to protect their drinking water quality, and to comply with Federal mandates.

Small communities are most in need of assistance for EPA compliance because of their limited technical and financial resources. Rural water is often the only understandable assistance small communities receive to operate water supplies, comply with Federal rules, and apply for Federal funding.

Rural water allows all small towns to work together to share common resources. This nationwide effort is truly unique because it accomplishes progressive environmental protection with the support of the local community.

As you know, without these initiatives effective implementation of the Safe Drinking Water Act and Clean Water Act in our rural areas would be impossible. And the EPA rules and their complexity are increasing (disinfection by-products rules, arsenic enforcement, groundwater rule, coliform testing, distribution system assessments, TMDLs, Clean Water Act re-permitting, the Federal bio-terrorism act security reporting, etc.).

All of our small and rural communities want to comply and provide safe water, however, they need assistance as to how to comply with EPA rules in a manner their community can afford and understand.

I am interested in hearing from Ms. Sutley on her plan to carry on the good work Chairman Jim Connaughton did in mediating talks between the Governors of Georgia, Alabama, and Florida as it relates to water allocation issues in the Apalachicola-Chattahoochee-Flint and Alabama-Coosa-Tallapoosa River basins.

I also would like to enter into the record, Madam Chairman, a statement by the President-elect on this issue made in October of this past year and a letter I, along with Senator Chambliss, sent him in response to his statement. In it the President-elect said he "will make protecting Florida's water resources a priority" while referencing the ACT/ACF river basin negotiations that have been going on for 17 years

between Georgia, Florida, and Alabama. This statement was not well received in my State. I hope this was purely election year politics in an effort to gain Florida's 27 electoral votes, and not a statement of preference for Florida's needs over the people of my State or the State of Alabama for that matter.

From Lake Lanier to Lake Allatoona, from Atlanta to West Point Lake, and from LaGrange to Columbus, I have worked with Senator Chambliss, Governor Perdue, and others to find a solution that benefits not only the people of our State, but all those who reside in the river basins regardless of what State they live in. I am hoping Ms. Sutley will clarify that the President-elect does not wish to undo the good work we have done to find a solution for all the people in the river basin and instead prioritize the needs of only the people of Florida.

I thank the Chair for calling this hearing.

[The referenced material follows:]

*The following was released by the Barack Obama Campaign for Change.*

**APALACHICOLA RIVER TO BE PROTECTED UNDER OBAMA PLAN  
LOCAL STAKEHOLDERS ANNOUNCE & ENDORSE OBAMA'S WATERWAYS PROPOSAL**

**PANAMA CITY** — Northwest Florida residents, commercial fishermen, elected officials and other local stakeholders today joined Barack Obama's Campaign for Change for a major policy announcement about Senator Obama's plan to protect the Apalachicola River.

Barack Obama and Joe Biden believe it is time to provide national leadership and to finally and fairly resolve long-standing clashes over water sharing. The depleting flow of the Apalachicola River – part of the Apalachicola, Chattahoochee and Flint (ACF) tri-river system, which flows through Georgia, Alabama and Northwest Florida before emptying into Apalachicola Bay – threatens the livelihood of the local commercial fishing industry, which is responsible for \$134 million in economic output and an additional \$71 million in value-added impacts.

The Apalachicola River is critical to the regional economy and has been the subject of countless disputes among the three states for more than two decades.

Announcing Obama's plan today at the St. Andrews Marina in Panama City, Obama's Florida Policy Director Ian Bassin said: "The litigation over the Apalachicola has gone on far too long and has not helped the residents of the Panhandle. It's time to get the lawyers out of this process and use sound science to help the stakeholders reach an equitable solution. Barack Obama will provide national leadership to make that happen."

According to the plan, Obama would call on the Governors of Florida, Georgia and Alabama to once again convene a stakeholder-driven process to reach equitable water sharing solutions. The difference this time is that Obama would direct the National Research Council (NRC) to conduct a study to assess the water availability, supply options, and demand-management alternatives that factor into ACF River System usage, as well as the impact of freshwater flow on the ecology of the Apalachicola River and Bay.

The study would provide the scientific basis for reaching an equitable solution; a solution that protects the drinking water of Atlanta's citizens and provides sustainable flows for productive agriculture in South Georgia and Alabama, and for the fish and wildlife that inhabit Florida's Northwest region and the industries they support. With today's modern data analysis, Obama believes we can provide the factual basis for a real and lasting water sharing plan.

"Vice President Gore once said that 'the environment is the economy and the economy is the environment.' Today, Florida's environment is hurting. And the Florida economy can't afford to bear the costs of letting it get worse," said Barack Obama in a statement read at the event. "The Apalachicola River is suffering from depleted flows that threaten the very existence of the Bay's commercial fishermen and the many families who depend on the river in Gadsden, Jackson, Calhoun, Liberty, Gulf and Franklin Counties. In Northeast Florida, the St. John's River is choked by pollution, lowering property values and tax revenues along its borders. And Florida beaches are under attack from red tide and harmful bacteria.

"As President, I will make protecting Florida's water resources a priority," Obama continued. "Instead of endless lawyering and litigation over the Apalachicola, the Panhandle region needs new national leadership – that's why I'll ask the National

Research Council to assess the water supply and recommend the best way to fairly allocate those scarce resources. We'll clean up the St. John's River, and we'll enforce the laws already on the books that protect Florida's beaches. Florida can't afford four more years of a Washington that places ideology over science. It's time for a new direction that protects our environment and the economy it supports. That's the change Florida needs."

Congressman Allen Boyd, who represents Apalachicola, offered his support for the plan: "Senator Obama's statement today on the issues facing the Apalachicola River and Bay is a welcome addition to the growing call for a science-based resolution to this problem. Senator Bill Nelson and I have introduced legislation that would have the National Research Council conduct a scientific, comprehensive study of the ACF River System, and I want to thank Senator Obama for joining us in this effort."

Additionally, John Robert Middlemas, a board member of Apalachicola Riverkeeper said, "For a very long time, the Apalachicola Riverkeeper and the citizens of Florida's Panhandle have been calling for a water allocation based on a scientific study of needs. And now we have a candidate for President – for President! – who is calling for such a plan. We are elated."

United States Senate  
WASHINGTON, DC 20510

October 17, 2008

The Honorable Barack Obama  
713 Hart Senate Office Building  
United States Senate  
Washington, DC 20510

Dear Senator Obama:

We are writing to express our disappointment with comments made yesterday by you and your campaign relating to water allocation issues in the Apalachicola-Chattahoochee-Flint (ACF) and Alabama-Coosa-Tallapoosa (ACT) River basins. As you may know, these river basins serve Georgia, Alabama, and Florida. While we appreciate your recent and sudden interest in the tri-state water issues we have been working on for the past six years, the comments by you and your campaign reflect a fundamental lack of understanding of the nature of the problems in the ACF and ACT basins, a lack of understanding of the requirements of the Army Corps of Engineers with regards to the ACF and ACT basins under federal law, and a cavalier disregard for the needs of the residents of Georgia.

According to your campaign's statement, you "would direct the National Research Council (NRC) to conduct a study to assess the water availability, supply options, and demand-management alternatives that factor into ACF River System usage, as well as the impact of freshwater flow on the ecology of the Apalachicola River and Bay." You also said "As President, I will make protecting Florida's water resources a priority."

As you may know, the Army Corps of Engineers is required under federal law to update the water control manuals for the ACF and ACT basins, and recently announced it would begin doing so in the ACT basin. We were pleased to hear from Secretary of the Army Pete Geren personally that the Corps is moving forward with updating these manuals, because it will allow the Corps to make smarter decisions in their management of these river systems. We have underscored to him how important this action is. As you also may know such an update would include studies to assess water supply and demand, and environmental management practices for ALL the users and stakeholder in the basins, not just those on the Apalachicola River and Bay. To ask the Corps to ignore its responsibilities under federal law in favor of the residents of Florida is a clear affront to the residents of Georgia. To state that you will make protecting Florida's water resources a priority over Georgia's shows that you do not care about the needs of the people of Georgia.

We have continually worked to get Georgia, Florida and Alabama together and to force the Corp of Engineers to update a 20-year-old Water Control Plan for the Alabama-Coosa-Tallapoosa and Apalachicola-Chattahoochee-Flint River Basins. In 2006 we held Senate hearings in Gainesville and Columbus to implore the Corps to keep its commitment to update its outdated water control plan for the two river basins.



On August 1, 2007, we met with Secretary Geren as well as Assistant Secretary of the Army for Civil Works John Paul Woodley, Lieutenant General Robert L. Van Antwerp and General Counsel Craig Schmauder. At the meeting, Secretary Geren indicated his desire to give mediation time to work before starting the update of the water control manuals.

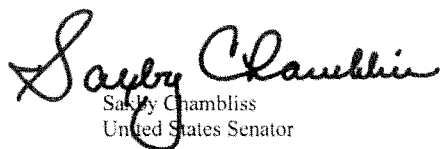
When Secretary Geren gave his commitment to us that if and when mediation broke down and was not making progress, he would begin the update of the water control manuals, we held him to that promise. On September 28, 2007, after judges involved in the mediation announced that the talks had broken down, we sent a letter to Secretary Geren strongly urging him to honor his pledge to update the water control plan.

On October 18, 2007, Secretary Woodley told both of us by telephone that the Corps will start the process for updating the water control manual for the Alabama-Coosa-Tallapoosa River Basin.

We also facilitated meetings in Washington between the Governors of Georgia, Alabama, and Florida, as well as meetings between the Governors and the Secretary of the Interior Dirk Kempthorne, and Council on Environmental Quality Chairman Jim Connaughton. We continue to work with the Governors and their staffs to come to a solution so the states can take advantage of the productive talks they have had and agree on a resolution.

From Lake Lanier to Lake Allatoona, from Atlanta to West Point Lake, and from LaGrange to Columbus, we have worked to find a solution that benefits not only the people of our state, but all those who reside in the river basins. It is unfortunate that you wish to undo the good work we have done to find a solution for all the people in the river basin and instead prioritize the needs of only the people of Florida.

Sincerely,

  
Sally Chambliss  
United States Senator

  
Johnny Isakson  
United States Senator

Senator CARPER. Senator Isakson, thank you very much for that statement.

Senator Whitehouse, I don't think you have spoken yet, have you?

**OPENING STATEMENT OF HON. SHELDON WHITEHOUSE,  
U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator WHITEHOUSE. Not yet, Mr. Chairman. But I appreciate the opportunity to be with you. I am delighted to welcome our two nominees and to join Senator Cardin in applauding them for their decision to embark on this public service journey at a perilous and I think also fascinating time.

Rhode Island, as the Ocean State, has a long tradition of environmental stewardship. It has been represented on this Committee over many years by Rhode Islanders like John Chafee, who served as the Chairman of this Committee, then his son Lincoln Chafee, who succeeded him, who was an energetic and distinguished member of the Committee. I hope that I can contribute on this Committee as well.

Despite our best efforts, you have not only local Rhode Island efforts, but regional efforts, like REGI, we remain very vulnerable to environmental threats from outside, particularly global warming. Our fisheries, our orchards, our very coastal infrastructure is vulnerable to the consequences of global warming. We simply can't do it all alone. In some cases, we can't do any of it alone. Like Senator Isakson, I can relate to the concerns about non-attainment. Rhode Island is in non-attainment, not because of anything we have done, but because of Midwestern power plants that dump their effluents on our State. And there is nothing you can do in Rhode Island about that. I tried, as attorney general, lawsuits and now we have a chance to work on this from a more national level.

So it really is important, and particularly with respect to the Environmental Protection Agency. This is an agency that has fallen into significant disrepute. More than anything else, it needs its integrity restored. It is important that, from a scientific and process point of view, the agency have integrity. It is also very important from a personnel and staffing point of view that it have integrity.

As you and I both know, the people who work at the Environmental Protection Agency give up a great deal in their lives. They are not super well-paid, they all have, almost all, I suspect, have better and more remunerative opportunities they could find for themselves. And they go to work every day at the EPA because they care deeply about and take pride in the mission of the Environmental Protection Agency. If you take away that pride by taking away the integrity of the agency, then you risk losing that key element, that ingredient of the agency's success, its career dedicated personnel.

I know you know this, but I just want to take this moment to emphasize it, because the administration of the EPA, under Administrator Johnson, has been a disgrace to our Country. It has harmed America and it has grievously harmed this agency and the well-meaning and honorable people who try to work in it. I thank you.

Senator CARPER. Thank you, Senator Whitehouse.

Under the early bird rule, Senator Voinovich is recognized next, and he will be followed by Senator Lautenberg, and saving the best for last, Senator Merkley.

Before Senator Voinovich speaks, I want to echo the sentiments that were just voiced. There is probably no one in the Senate that I admire more, like more and enjoy working with more than George Voinovich. We had the opportunity to work together as Governors, and he is a dear friend and highly principled member of the Senate. I realize we are stuck with him for 2 more years, and that is a good thing. But I lament the eventual loss of this member of our body.

Senator Voinovich.

**OPENING STATEMENT OF HON. GEORGE V. VOINOVICH,  
U.S. SENATOR FROM THE STATE OF OHIO**

Senator VOINOVICH. Thank you, Senator Carper.

I welcome the new members from the other side of the aisle to this Committee, and look forward to working with them, as well as our Chairman, Senator Boxer.

I have said that I think these next 2 years may be the most important 2 years that I serve in public office, because of the condition of our economy and the threat, in all aspects, to the world economy. And I think some of the work that we are going to do here on this Committee is going to have a lot to do with what our future is going to look like.

I am really pleased that I had a chance to meet with our nominees in my office. I enjoyed our visit. I echo my colleagues' comments about welcoming you to this business. I want to thank your families for the sacrifice that they are going to make in order for you to serve the way you are going to have to serve to do the job that I am sure we will want you to do and our President-elect wants you to do.

Having served as a mayor and Governor and Senator, I understand the needs, concerns and responsibilities that each level of government brings to bear on the challenges we face as communities and as a Nation. I really think it is neat that both of you have had some really good State and local experience, because that is where the rubber hits the road. I think those experiences are going to stand you in good stead when some of these decisions come your way, that you just don't have the Federal attitude toward some of these things.

Our first nominee this morning is Lisa Jackson to be EPA Administrator. And I want you to know, and as I told you, I think it is the most difficult job that one can have in the Federal Government. I know that there have been some comments about the other people that have held that office. I want to say for the record that I think Steve Johnson did an outstanding job as Director of the EPA. Mike Leavitt, who was a former Governor of Utah, when he was head of the EPA, I thought he did a very, very good job. So that is for the record. The goal is for you to do the very best that you can do with what God has given you.

Our second nominee is Nancy Sutley, to be Chair of the Council on Environmental Quality. As with Ms. Jackson, your experience working on environmental issues with the Federal Government on

behalf of California and the city of Los Angeles will help you to bring a nice, local perspective. I didn't have an environmental person when I was mayor of the city of Cleveland, but L.A. is a big city.

I look forward to working with you on a variety of issues, including more funding and assistance to local communities to deal with water infrastructure needs. Senator Lautenberg and I are well aware of this State revolving loan funds have not been adequately funded for 10 years. Senator Lautenberg and I put legislation in to provide some grants to communities. We have cities all over the Country that are being required to comply with the law in terms of storm overflow. And frankly, with the economy today, and I have been told the rates are going to go up 10 percent each year, and no help from us, it doesn't make sense. On the one hand, we want to stimulate the economy, and on the other hand, we have these situations.

Last but not least, I would like to mention the Great Lakes. Senator Obama, President-elect Obama has made a real commitment to that. I want you to know that I am going to make sure that he fulfills that commitment, and hopefully we can get somebody in either one of your shops that is going to provide the leadership that we need to get it done.

Thank you.

[The prepared statement of Senator Voinovich follows:]

STATEMENT OF HON. GEORGE V. VOINOVICH, U.S. SENATOR  
FROM THE STATE OF OHIO

Madam Chairman and Ranking Member, thank you for holding this nominations hearing.

I am pleased to have had the opportunity to meet with both of our nominees prior to this hearing, and I thank them for making themselves available to meet with members of this Committee.

Having served as a mayor, Governor and now as Senator, I understand the different needs, concerns and responsibilities that each level of government brings to bear on the challenges we face as communities and as a Nation. I am very pleased that both nominees before us today have experience serving at the State and local level. I thank them both for their willingness to serve, and even more importantly, I thank their families for their sacrifices. I welcome them and look forward to hearing from them.

Our first nominee this morning is Lisa Jackson to be EPA Administrator. In my opinion this is one of the most difficult positions in the Federal Government. No matter what you do—it is either too far for industry or not enough for the environmental groups.

I believe that Mrs. Jackson's past experience working with the EPA both at the State and Federal level will serve her in good stead, and I hope that she will be able to bring the perspective she gained from her work in New Jersey to bear on an agency that is not always understanding of the needs and concerns of States.

Our second nominee is Nancy Sutley to be Chair of the Council on Environmental Quality. As with Mrs. Jackson, the experience working on environmental issues with the Federal Government on behalf of California and the city of Los Angeles that Ms. Sutley will be able to bring to Washington will serve her, the President-elect and the Country as well.

The perspectives of State and local governments, which both nominees understand, can help the Federal Government work more effectively with State and local officials.

I also look forward to working with both of you on a variety of issues, including:

- More funding and assistance to local communities to deal with water infrastructure needs. There is a crisis in my State—hundreds of communities are increasing their water and sewer rates while at the same time they are facing significant job losses. If the EPA is going to impose costly mandates on struggling State

and local governments, then it should provide funding for compliance with those mandates.

- Strong leadership in efforts to restore the Great Lakes. I am pleased that President-elect Obama has made a great commitment to the Great Lakes. As I mentioned to Mrs. Jackson, we finally have a Great Lakes Regional Collaboration Strategy, but we have never had someone in DC to devote the time to this carrying out this plan; and

- Harmonizing our environment, economic, energy, and national security needs through a responsible and balanced application of the Clean Air Act and any future policy to reduce greenhouse gas emissions. I am looking forward to working with you on climate change, and I hope we can come up with a compromise.

Again, I thank both witnesses for being here today and for their desire to serve this Country.

Senator BOXER [presiding]. Thank you so much, Senator.

I want to announce who has not spoken yet, this is all in order of arrival. So it looks to me that we have three, four. Lautenberg, Merkley, Baucus and Cardin. Oh, then it is three.

So we will go to Senator Lautenberg.

Senator LAUTENBERG. Thank you again, Madam Chairman. To our good friend, George Voinovich, George, if you find civilian life a little dull, you can come back in a couple of years.

Senator VOINOVICH. No, thanks, Frank.

[Laughter.]

Senator LAUTENBERG. Wait.

[Laughter.]

Senator LAUTENBERG. The last 8 years, it is interesting how the division of views develops as we chat here. And no gloves on yet. The last 8 years, in my view, at EPA, have been very disappointing. Global warming, for example, the most serious environmental threat that we face, we haven't done very much at the Federal level, and the current EPA prevented States from taking action at the local levels. When California, New Jersey and 15 other States fought to cut greenhouse gas emissions from cars and trucks, under Mr. Johnson, EPA sided with industry more often than not, and even denied the routine waiver that would have allowed States to regulate these emissions. And our CEQ chair knows very well in her State how hard you worked to try to get a waiver, how often it was denied.

The current Administration has also failed to provide sufficient funding to run the Superfund program. And everyone knows how important a program that is. During the 1990s, EPA averaged more than 80 Superfund sites cleaned up per year. But in 2008, only 30 sites were cleaned up. And New Jersey has more Superfund sites than any other State in the Country, and this EPA has left those sites to decay and allowed toxins to seep into the neighborhoods where our children live nearby, playing around those areas. This is EPA's legacy over the last 8 years, a legacy of disappointment, missed opportunities and secrecy, where officials refused to even appear before this Committee, denied an appearance before this Committee.

Well, it is time for a new beginning, time to leave behind the mistakes of the past and focus on the challenges of the present and the future. It is time to usher in a better and brighter future, for this agency, for our environment, for the health of generations to come. Lisa Jackson and Nancy Sutley are the right leaders to forge that change.

As I said in my opening comments, Lisa Jackson has the energy, the expertise, the experience we need to revitalize the EPA. And we found out that her husband is fully behind the effort, and we thank you. We are getting two of you.

And Nancy Sutley has a career of experience to draw on as she advises President-elect Obama on environmental policy.

Once these nominees are confirmed, I look forward to working with them. I have had a chance to work with Lisa Jackson in the past, and look forward to continuing that. And on this Committee, I look forward to passing legislation to protect our environment and the health of our children for generations to come.

I thank you, Madam Chairman, for your leadership on this Committee.

Senator BOXER. Senator, thank you so much.

Senator Merkley.

**OPENING STATEMENT OF HON. JEFF MERKLEY,  
U.S. SENATOR FROM THE STATE OF OREGON**

Senator MERKLEY. Thank you, Madam Chair.

Lisa Jackson and Nancy Sutley, I am impressed by your public service credentials that you bring to this Committee and to this opportunity to serve in the executive branch. It is clear that cleanup of our environment has been of great concern to each of you. And it certainly is of great concern to the citizens of Oregon.

It is our belief in our State that it is so important to protect the treasures of this planet as a legacy for our children, and that pursuing that aggressively will also be great for the economy. And believe you me, we are thinking about the economy day and night out on the West Coast, as we are throughout the rest of the Nation.

It has been our experience in the last several years that it has been up to the State to take leadership. And Oregon has done just that, creating perhaps the best renewable energy law in the Country, 25 percent by 2025, on top of the hydro power that we currently utilize in the State. Probably the most aggressive law for the efficiency of our appliances, establishing a 2 percent standard for inclusion biodiesel in all diesel that will be triggered this year, as a result of the opening of a new biodiesel plant last year. Expanding Oregon's landmark recycling bill. Being on the forward edge of restricting the use of mercury in products. And the list goes on and on.

But as we look from the West Coast to Washington, DC, we have been disappointed by the failure of leadership, by the paralysis of Congress as well as the failure of leadership in the Bush administration. Now it is time to change that. Certainly, one of the statistics that was much discussed in my part of the Country was a survey of scientists who work at EPA. If I recall correctly, half of the scientists said that they had been pressured by their managers to modify their findings for political purposes.

That is an astounding, astounding finding. It is a systematic effort to degrade science, to degrade the factors that will help us see clearly into the future. So I certainly look forward to the type of leadership that both of you will be able to bring.

Senator BOXER. Thank you, Senator.

We will go to Senator Baucus, then Senator Vitter, and that will close the opening statements, and we will get to Ms. Jackson's statement.

**OPENING STATEMENT OF HON. MAX BAUCUS,  
U.S. SENATOR FROM THE STATE OF MONTANA**

Senator BAUCUS. Thank you very much, Madam Chairman.

I add my congratulations to Lisa Jackson and Nancy Sutley on their nominations. I know you will work very hard, you are dedicated public servants and you care, and certainly in this spirit of this new Administration, you are going to go the extra mile. I congratulate you both and wish you very good luck.

Marian Anderson, the great American soloist, who 70 years ago gave a concert on the steps of the Lincoln Memorial, when she was not allowed to sing at Constitution Hall, gave this advice about leadership: "Leadership should be born out of the understanding of the needs of those who will be affected by it." The EPA has failed to understand the needs of some of our most vulnerable communities. Nowhere is this more true than in Libby, Montana, where EPA's failure to declare a public health emergency has hindered EPA's cleanup efforts and denied medical care to hundreds of residents.

I have spoken many times about the over 200 people in Libby that died from asbestos contamination caused by W.R. Grace, over 200 people have died as a result of the contamination caused by W.R. Grace. In the year 2001, EPA took chest x-rays of the people in Libby who had been exposed to asbestos. Well over 1,000 people showed abnormal lung changes and needed long-term medical care, over 1,000. At that time, the EPA's scientists and doctors in Libby recommended that a public health emergency be declared, so that EPA could have the authority to do a proper cleanup and provide medical care for the community. Unfortunately, the White House overruled EPA's scientists and decided not to declare a public health emergency.

Asbestos is a sinister poison. Asbestos-related diseases, once it sets in, sets in decades after the exposure. You don't know until decades after the exposure. And the suffering is excruciating, especially with mesothelioma, a particularly pernicious form of asbestosis. So the people in Libby with asbestos in their lungs wait. They don't know, they worry that 10, 15, 20 years later, lo and behold, they have it. They wait to see if they will develop asbestosis or mesothelioma. They wait for a public health emergency to be declared so they can get the Federal medical care they need. Otherwise, they are not going to get the Federal medical care that they need. And then they worry that that help will never come.

Several years ago, I made a promise to the people of Libby that I would do all I could to help them. Now I expect both of you to make me a promise. If you want my support, I need your commitment that you will come to Libby and see the suffering that W.R. Grace has caused and the opportunity we have to right this wrong. And I need your commitment that you will correct the failure of the current Administration to declare a public health emergency in Libby.

Leadership should be born out of the understanding of the needs of those will be affected by it. That is what Marian Anderson said 70 years ago when she was denied the ability to sing at Constitution Hall. So I say, come to Libby, meet the people who are depending on you. If you do this, I am confident you will do the right thing.

Thank you, Madam Chairman.

[The prepared statement of Senator Baucus follows:]

STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

I add my congratulations to Lisa Jackson and Nancy Sutley on their nominations to lead the Environmental Protection Agency and the Council on Environmental Quality. Marian Anderson, the great American soloist who 70 years ago gave a concert on the steps of the Lincoln Memorial when she was not allowed to sing at Constitution Hall, gave this advice about leadership: "Leadership should be born out of the understanding of the needs of those who would be affected by it."

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I have spoken many times about the over 200 people in Libby who have died from asbestos contamination caused by W.R. Grace. In 2001, EPA took chest x-rays of the people in Libby who had been exposed to asbestos. Well over a thousand people showed abnormal lung changes and needed long term medical care.

At that time, the EPA scientists and doctors in Libby recommended that a public health emergency be declared so that EPA would have authority to do a proper cleanup and provide medical care for the community. Unfortunately, the White House overruled EPA's scientists and decided not to declare a public health emergency.

Asbestos is a sinister poison. Asbestos related disease sets in decades after the exposure, and the suffering is excruciating. So the people in Libby with asbestos in their lungs wait and worry. They wait to see if they will develop asbestosis or mesothelioma. They wait for a public health emergency to be declared so they can get the Federal medical care they need. And they worry that help will never come.

Several years ago, I made a promise to the people of Libby that I would do all I could to help them. Now I expect you both to make me a promise. If you want my support, I need your commitment that you'll come to Libby and see the suffering that W.R. Grace has caused and the opportunity you have to right this wrong. And I need your commitment that you will correct the failure of the current Administration to declare a public health emergency in Libby.

"Leadership should be born out of the understanding of the needs of those who would be affected by it." Come to Libby. Meet the people who are depending on you. If you do this, I'm confident you'll do the right thing.

Senator BOXER. Senator Baucus, thank you. I just want to say as Chair, every time you speak about this subject, it touches everybody's heart. And let me say that we do need this commitment, and I hope you that will ask that question. If you can't be here because of your work that you have pending now, please, I will ask it for you and be very happy to do that, as well.

Senator Vitter will have the last opening statement, and then we will get to Lisa Jackson.

**OPENING STATEMENT OF HON. DAVID VITTER,  
U.S. SENATOR FROM THE STATE OF LOUISIANA**

Senator VITTER. Thank you, Madam Chair. I am pleased to welcome both of these nominees, and in particular, starting with Lisa Jackson, a fellow Louisianan and fellow New Orleanean, who went to high school literally six blocks from the home I grew up in. I was delighted to visit with Lisa recently, talk about many challenges



she will confront in EPA, including some very unique post-Katrina issues and post-hurricane issues in Louisiana.

I was also delighted she expressed a real willingness to revisit Louisiana, return to Louisiana very soon to see some of those pressing issues that involve EPA, including with regard to Corps of Engineer work, which is very time-sensitive, very soon.

I haven't had a chance to visit with Nancy Sutley, but look forward to hearing your views in terms of your prospective role and the thoughts you would bring to that job.

Clearly, climate change will be a primary topic of discussion in this Committee and with regard to your jobs. I hope we discuss that fully, beginning here. I think it is really imperative that we think carefully about how, when, if we do that, considering that a very significant new regulatory burden implemented in the context of the current economic downturn would have very significant consequences. We need to think through that very carefully.

Again, I look forward to all of your comments and to the questioning of the entire Committee. Thank you.

Senator BOXER. Thank you.

I wanted to mention to colleagues that we will have 7-minute rounds. I am willing to stay, and I think Lisa Jackson is willing to stay as long as it takes, and then we will go to Nancy Sutley.

Lisa Jackson, once again, welcome, and you have the floor.

**STATEMENT OF LISA JACKSON, NOMINATED TO BE ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY**

Ms. JACKSON. Thank you, Madam Chairman.

Please allow me to begin by first expressing my gratitude to you and to Ranking Member Inhofe for holding this hearing; to Senators Lautenberg and Menendez for their kind introductions; to all the members of the Committee for their thoughtful statements; and to many of you for taking the time to meet with me over the past week.

If I may, Madam Chairman, I would like to re-introduce my husband, Kenny, whom I am delighted to have here with me today. My sons, Marcus and Brian, wanted to be here today, but their demanding mother insisted they go to school instead. I'm also pleased to introduce friends from the Ramapough Mountain Nation in Upper Ringwood, New Jersey: Wayne Mann, Vivian Milligan, Jay Van Dunk and Veronica Van Dunk.

They and too many other Ramapoughs have lived on top of a Superfund site for decades. They are vivid reminders to me of how EPA can be a force for good if it does its job well and what can go wrong if EPA falls short. When I was nominated by the President-elect to lead EPA, Vivian called me and she cautioned me with one simple request: don't forget about us. So I asked them here today, not to offer them empty promises, but as witnesses to what I hope will be the beginning of my journey as EPA Administrator.

I am deeply honored that President-elect Obama has nominated me to lead the Environmental Protection Agency. As one who has spent 21 years of my career in government service working to protect public health and the environment, I can think of no higher

calling than to be asked to serve as EPA Administrator. It would be a particularly special privilege to head the agency where I worked as a career employee for 15 of those 21 years.

I joined EPA in 1987 as a staff engineer. Two years later, I moved to the agency's Region 2 office in New York, where I served as a project manager for Superfund sites. I worked my way up through the EPA ranks.

In 2002, I moved to New Jersey State Government. On Mardi Gras Day in 2006, in honor of my beloved native New Orleans, Governor Jon Corzine swore me in as Commissioner of the New Jersey DEP, where I managed an agency of almost 3,400 dedicated public servants.

Madam Chairman, from a past of public service, I come to this moment, ready, able and eager to serve our Country and the President-elect and mindful of the awesome responsibility of protecting public health and the environment. President-elect Obama has affirmed two core values that he expects EPA to uphold during his Administration: scientific integrity and the rule of law. He has also made it clear that we will operate with unparalleled transparency and openness. I pledge to uphold those values.

Science must be the backbone of what EPA does. The environmental and public health laws Congress has enacted direct the EPA Administrator to base decisions on the best available science. EPA's addressing of scientific decisions should reflect the expert judgment of the Agency's career scientists and independent advisors.

If I am confirmed, I will administer with science as my guide. I understand that the laws leave room for policymakers to make policy judgments. But if I am confirmed, political appointees will not compromise the integrity of EPA's technical experts to advance particular regulatory outcomes.

The President-elect's commitment to the rule of law is the hallmark of a principled regulatory agency. EPA needs to exercise its policy discretion in good faith and in keeping with congressional and court directives. I respect this Committee for its diligent efforts to hold EPA to the rule of law in recent years, and I pledge to uphold this principle every day if I am confirmed.

The President-elect strongly believes responsible stewardship of our air and water can live side-by-side with robust economic growth. Done properly, these goals can and should reinforce each other.

The President-elect's environmental initiatives are highlighted by five key objectives: reducing greenhouse gas emissions; reducing other air pollutants; addressing toxic chemicals; cleaning up hazardous waste sites; and protecting water. These five problems are tough, but so is our resolve to conquer them. Knowing the bright minds at EPA and the determination and spirit of Americans, we will.

I was raised in New Orleans. My mother, like so many others, lost all she had in Hurricane Katrina. Her home lay vulnerable because of its design, but also because of the failure of the Government-built levees that were supposed to protect her. The natural defenses of the marshes and wetlands south of New Orleans have been destabilized by siltation and cut by oil and gas lines. The Gov-

ernment agency that was supposed to respond to the disaster was inept and incapable. In the face of that tragedy, I almost left public service. But I stayed because I believe we can and must do better for my mother and for all Americans.

Like Vivian, Veronica, Wayne and Jay right behind me here, my mother has suffered from environmental negligence. But none of them are victims. They are survivors. They are Americans. They are my conscience. And I pledge today to serve them and all Americans well. Thank you very much.

[The prepared statement of Ms. Jackson follows:]

**Statement of Lisa P. Jackson  
Hearing on Nominations  
Committee on Environment and Public Works  
United States Senate  
January 14, 2009**

Thank you, Madam Chairman.

Please allow me to begin by first expressing my gratitude to Chairman Boxer and Ranking Member Inhofe for holding this hearing; to Senators Lautenberg and Menendez for their kind introductions; to all the members of the Committee for their thoughtful statements; and to many of you for taking the time to meet with me over the past week.

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I joined EPA in 1987 as a staff engineer. Two years later, I moved to the agency's Region 2 office in New York, where I served as a project manager for hazardous waste sites. I worked my way up through the EPA ranks. In 2002, I moved to state government. On Mardi Gras Day in 2006, in honor of my beloved native New Orleans, Governor Jon Corzine swore me in as Commissioner of the New Jersey DEP, where I managed an agency of 3,400 dedicated public servants.

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I pledge today to serve them and all Americans well. Thank you.

**Environment and Public Works Committee Hearing  
January 14, 2009  
Follow-Up Questions for Written Submission**

Questions for Jackson

Questions from:

Senator Barbara Boxer

1. Ms. Jackson, recent Supreme Court decisions have impaired EPA's ability to protect our nation's rivers, streams and lakes from pollution. In the past, EPA has been unwilling to share information with Congress regarding the impact of these court cases on the Clean Water Act regulatory programs.

Will you commit to the Committee to provide information on the status of the Clean Water Act enforcement programs that are experiencing difficulties associated with these recent decision, and work with the Committee to ensure EPA's regulatory program is protecting the nation's rivers, streams and lakes?

Yes.

2. Ms. Jackson, our nation's sea ports are vital to our nation's economy, but they are also a serious source of toxic pollution for the people who live near them. Pollution from sea-going ships are making those people sick, and causing premature deaths.

To give you a sense of the impact of ship pollution, EPA says that even if by 2015 Santa Barbara eliminated all pollution sources except sea-going ships, it still would not meet the Clean Air Act health-based standards.

Along California's South Coast -- which already fails to meet Clean Air standards, the amount of a smog forming pollutant, called "nitrous oxide", and toxic soot and dust could almost triple by 2020 thanks to port-related activities.

Last Congress, I sponsored a bill titled the "Marine Vessel Emissions Reduction Act", which goes beyond current efforts to address this pollution. That bill needs to be undated and moved forward.

As Administrator, will you work with me and my staff to update and strengthen this bill to reduce dangerous sources of pollution, while enhancing port's economic competitiveness?

Yes.

3. Ms. Jackson, the Children's Health Protection Advisory Committee is an advisory committee made up of researchers, health care providers, government officials, and industry representatives. They advise EPA on regulations, research, and other issues. When EPA created this Committee, it asked the Committee to proactively search out and report on the top children's environmental health issues. EPA developed programs to address these threats.

The independent Government Accountability Office recently found that “EPA has not proactively used the Advisory Committee to ensure that the agency’s regulations, guidance, and policies address the disproportionate risks to children that result from environmental contaminants”, and that “EPA has largely disregarded key recommendations” from the Committee.

Will you ask the Committee on your first day in office to examine environmental health issues, including those highlighted by GAO, and report back with a list of priority environmental health issues for children? And, will you also commit to developing plans to address each of these threats?

**I will make that request of the Committee in my first two weeks in office if I am confirmed. I commit, if I am confirmed, to developing a reasoned, responsible plan or response with regard to each of the Committee’s recommendations.**

Senator Thomas Carper

1. As you know, many states do not have the monitoring data for mercury emissions from power plants. Without this information it is very difficult for a state to determine what types of mercury problems they may have. Will you make it a priority to give states the technical assistance they need to monitor mercury?

Yes.

2. As you know, clean diesel is a priority of mine. I have worked hard with my colleague Sen. Voinovich to try to clean up our current fleet of diesel vehicles – knowing that the EPA has worked hard to clean up the future fleet. I was pleased to see the EPA and industry work together on a comprehensive regulatory regime that by 2010 will result in near zero emissions from diesel engines. Unfortunately, I have heard there might be suggestions of rolling back these monumental rules, despite the Engine Manufacturers Association (EMA) affirming its members are on schedule and ready to meet EPA’s stringent 2010 emission standards.

I ask you to assure this Committee that as Administrator you will not accept a change in the regulatory structure of the 2010 heavy duty standards -- whether a roll-back of them or delay in implementation.

**The rulemaking to reduce emissions from diesel engines by 2010 has been praised as a successful coordination among EPA, environmental groups, and the diesel engine industry. I am not aware of a basis for rolling back those rules.**

3. I’m concerned about EPA’s current “one-size-fits-all” approach that largely ignores state environmental achievements. In Delaware, this has manifested in the form of a conflict that our poultry farmers have had with rules EPA established for managing nutrients.

In Delaware, large poultry farmers are subject to federal nutrient management regulations for discharges coming from point source pollutants. However, under the most recently established EPA rule, these regulations are also being extended to cover fertilizer and the

agricultural runoff that comes from them, which are by most definitions considered to be non-point sources. In essence, the EPA is applying a point source regulation to a non-point source pollutant.

Delaware already has exemplary state nutrient management laws regulating non-point source pollutants, but EPA fails to recognize that these laws even exist, let alone that they are of equivalent value as the federal law. Now our poultry farmers must again change their practices to conform to a federal rule that provides no apparent environmental advantage over the state laws.

As the former Commissioner of the New Jersey Department of Environmental Protection, I am sure you can appreciate the unproductive nature of having to change perfectly good state practices to conform to federal rules intended for states of a different environmental and agricultural make-up. Would you be amenable to changing the EPA rule-making process to allow for flexibilities that include the recognition of equally valuable state regulations?

**I do not have information on the approach EPA has taken to nutrient management by poultry farmers in the state of Delaware. If confirmed, I will ask for information from the responsible EPA officials on the agency's approach, so that your concerns can be assessed.**

4. Obama has announced Carol Browner will fill a new position- the Assistant to the President for Energy and Climate Change. It is unclear how Ms. Browner will interact with other key environmental leaders – do you know how you will interact with her?

**If confirmed I will consult with Ms. Browner regarding recommendations to the President on climate and energy policies that fall within EPA's expertise. If confirmed I will hear Ms. Browner's views on climate and energy policies that fall within EPA's responsibility. If confirmed I will make my own independent judgment with respect to any decision that is delegated to me by Congress. If confirmed I will advise the President directly on matters that fall within EPA's expertise whenever appropriate.**

5. Our Delaware air quality office has informed me that there appears to be significant inconsistencies between the criteria EPA regional offices are using to evaluate 8-hour ozone State Implementation Plan (SIP) submittals – especially when trying to address interstate pollution. It is important that SIP review be based on the very best science available, and on nationally consistent criteria. Can you assure the Committee that you will review the SIP process and ensure that the approval process is consistent nationwide?

**Yes.**

6. In December, the District Court of Appeals remanded the Clean Air Interstate Rule (CAIR). Instead of vacating the rule immediately, the court decided to keep the sulfur dioxide and nitrogen oxide program in place and allow EPA an undetermined amount of time to re-write the CAIR rule to meet their earlier decision. The same court vacated the



EPA's mercury rule – which EPA has appealed to the Supreme Court. Will you address these issues by staying within the authority of the Clean Air Act to limit the ability for further court battles?

**Yes.**

7. The focus of most environmental reviews is on individual transportation projects. Depending upon the scope of the project, this may be too narrow. Since transportation impacts are usually the result of the operation of the transportation network at large, can you help us consider how to invest in the best mix of community and regional transportation improvements? How can we ensure that the EIS includes the consideration of a project in terms of the entire transportation system as well as the location of development, housing and jobs?

**EIS's for federally funded transportation projects are typically done by the Federal Highway Administration (FHWA) or other funding agency, rather than EPA. EPA does have a role in reviewing and commenting on these EIS's, but of course the main responsibility for the correct interpretation and implementation of NEPA lies with CEQ. I would note that past commentators have advanced the view that the EIS should consider a project in light of its impact on the overall transportation system. I would hope that CEQ would examine this perspective as it considers improvements in NEPA implementation.**

8. In 1975, we created CAFE to reduce fuel usage and saw more fuel efficient cars come on the roads over the next 20 years. At the same time, driving increased dramatically due to a lack of transportation alternatives and the locating of homes far from jobs, schools, doctors, groceries, etc. We are now trying to reduce greenhouse gas emissions and the transportation sector is responsible for 30 percent. How do we prevent making the same mistake of thinking transportation emissions can be controlled only on the car and fuel side? What is EPA's role? And how might this be incorporated into any administration proposal on climate or transportation?

**Curbing the increase in vehicle miles traveled (VMT) is an important element of a climate change strategy for the transportation sector, along with fuel economy and GHG reduction standards, and requires smart land-use planning and investments in public transportation. EPA has a role to play in these areas and I will keep your concerns in mind as I review EPA's programs.**

9. Will the administration put forward climate change and transportation reauthorization proposals? If so, what will be the role of DOT in the development of a climate proposal? And what will be the role of EPA in a transportation proposal?

**Both agencies have valuable roles to play and would presumably participate in the interagency process on both legislative proposals. I cannot speak to the specifics or timing of the proposals the Administration will offer.**

10. The President-elect plans to approve the California waiver. Will the compliance dates in the California tailpipe emissions standard be adjusted? Will you coordinate with NHTSA? Will the tailpipe emissions standards be coordinated with the new CAFE standards to ensure consistency?

**I do not know whether the compliance dates in the California tailpipe emissions standard will be adjusted. If confirmed I will coordinate with NHTSA.**

11. In April 2007, I introduced a four pollutant bill, the Clean Air Planning Act, to address pollutants from fossil-fuel power plants. The EPA has yet to do an analysis of this bill – despite me asking in July 2008. Will you assure me that as Administrator you will have the EPA model the cost/benefits of the 2007 Clean Air Planning Act in the next 90 days?

**I commit if confirmed to have EPA conduct that modeling expeditiously, and to not allow any delay beyond 90 days to be the result of anything other than unavoidable constraints on EPA staff and technical resources.**

Senator Frank Lautenberg

1. The G-A-O has released several reports detailing problems with the way the E-P-A regulates toxic chemicals. Based on these reports, I have written a bill that would require safety testing of chemicals before they are put on the market. Do you support reforming the way we regulate toxic chemicals? What changes do you recommend?

**I believe that strengthening our chemical risk management system should be a high priority. Early in my tenure if confirmed, I will work with members of Congress, EPA staff, and the White House to determine the best approach. I am familiar with your bill and will definitely review it closely as we move forward.**

2. A recent Union of Concerned Scientists survey showed that sixty [60] percent of scientists at the E-P-A had experienced at least one incident of political interference in their work over the past five years. As Administrator, what will you do to ensure that E-P-A's scientists can focus on science, not politics?

**One thing I will do if confirmed is to make very clear to all EPA staff that the agency's scientific statements are to reflect the scientific judgment of EPA's professional experts, rather than any political appointee's preference for a particular regulatory outcome.**

3. In 2006, the E-P-A enacted a rule that exempted companies from reporting some or all of their toxic pollution under the Toxic Release Inventory, which I created. Do you support overturning this rule?

**I support expeditiously reviewing, with the advice of EPA technical staff and attorneys, the factual and legal grounding of that rule. I commit if confirmed to**

**taking expeditious and appropriate action if the review reveals that the rule lacks adequate factual or legal support.**

4. Under President Clinton, about eighty [80] Superfund sites were cleaned up each year. Over the past eight years, the cleanup rate has been about half of that. What would you do to increase the pace of cleanup?

**One of the things I would do if confirmed would be to work with Congress and OMB in an effort to increase federal funding for cleanup of Superfund sites.**

Senator Benjamin Cardin

1. Press reports in recent weeks suggest that EPA intentionally overstated progress in the Chesapeake Bay cleanup effort. I have devoted a substantial part of my career to Bay restoration efforts, so I am especially troubled by these reports. Can you pledge to me – and to the 17 million people who live in the Bay watershed – that factual reporting will replace spin when it comes to reporting on the health of the Chesapeake? Will you join me for a tour of the Bay so you can see for yourself the challenges we face?

Yes.

2. Do you support legislation to overturn the two U.S. Supreme Court decisions that have restricted the scope of the federal Clean Water Act in order to return the law's historic protections for all "waters of the U.S." as defined before the Court's rulings?

**The President-elect has supported such legislation, and I will if confirmed assist Congress with legislation to clarify the scope of the Clean Water Act.**

3. Will you commit to working with me to determine and then implement the changes to EPA's stormwater program necessary to tackle this issue?

Yes.

4. Will you pledge to work with me and the members of this Committee to review the impacts of Mountain Top Mining and implement efforts to mitigate the adverse impacts of this mining practice?

Yes.

5. Under the Superfund and RCRA statutes, EPA has ultimate authority over all of these cleanups, including those conducted at Federal Facilities such as military installations. Is that your understanding of these laws?

**EPA has a very important role to play in Federal Facility Cleanups. The same high standards of cleanup and accountability should apply at federal sites as at other Superfund sites. Federal Facilities Agreements negotiated by EPA under its**

**authorities are important to the integrity of cleanups by federal agencies and will continue to play a vital role if I am confirmed. I would hope that, under President Obama, DOD and EPA will work closely together with the aim of ensuring that DOD cleanups are protective of health and the environment.**

6. As you know, in recent years there has been a dispute with some Department of Defense and Department of Energy facilities on this issue. What will you do to ensure that the cleanup at the Fort Meade Army Base moves ahead under strict EPA oversight? I will note for the Record that Fort Meade does not have a Federal Facilities Agreement even though it has been on the Superfund list for over nine years now.

**See above. I will look into the situation and Fort Meade and determine whether a Federal Facilities Agreement is needed.**

Senator Tom Udall

1. EPA is responsible for promulgating standards for uranium recovery, and permitting underground injection for in situ leach mining. NRC has been going forward with a GEIS (General Environmental Impact Statement) to set its policies for permitting in situ leach mining.

- How will you coordinate with NRC, DOE, and the states to ensure that any future uranium mining is not a repeat of the tragedies of the cold war era?

- It seems that the process of in situ leach mining requires an impossibly perfect combination of sub-surface stratigraphy and a lack of interest in using groundwater in the mining area. It is also my understanding that according to the Nuclear Regulatory Commission there has not been an in situ leach mining site that has not experienced a leak of contaminated ground water. Does the EPA have the regulatory capacity to ensure that in situ leach mining does not result in the contamination of our ground water resources?

- To date, has EPA successfully regulated any in situ leach mining, bringing groundwater contamination to background levels?

**The concerns you raise are very serious and deserve careful attention. I will if confirmed consult with the EPA staff to better understand the scope of EPA's authority over in situ leach mining and the history of these sites in terms of groundwater contamination and remediation. Coordination with DOE and DOD is obviously important and I will if confirmed investigate the opportunities for such coordination as well.**

2. Scientists are increasingly finding traces of pharmaceuticals in ground and surface water. The implications of this continue to be studied, and the negative impact on humans and aquatic life is not yet clear. Still, scientists recommend that the EPA establish health advisory levels for commonly detected pollutants. These

recommendations will be especially important as more states in the southwest move more and more to reusing waste water domestically and agriculturally.

- What steps will you take as Administrator of the EPA to quickly develop health advisory levels for commonly detected pharmaceuticals in drinking water?

**I understand that the EPA staff is studying the presence of pharmaceuticals in drinking and surface water. I will consult with the staff about the need and basis for health advisories and determine the best path forward.**

Senator James M. Inhofe

1. Do you support increased transparency in the development of regulations, and do you believe that other agencies should have the ability to review and comment on proposed and final rules through an interagency review process prior to their release?

**I support increased transparency in the development of regulations in every instance in which the increase is consistent with the purpose of and directives in the statutes authorizing or mandating the regulations. I believe other agencies should have the ability to review and comment in every instance in which that is consistent with the purpose of and directives in the statutes authorizing or mandating the regulations.**

2. What plans and policies do you plan to follow to ensure that valid science, transparency and proper internal reviews are used to establish reasonable policies and regulations?

**If confirmed I will work to ensure that whenever a statement in an EPA publication is presented as a scientific finding, it actually reflects the best scientific judgment of EPA's technical staff. If confirmed I will also work to ensure that EPA does not suppress the considered judgment of agency scientists and other technical staff in matters that fall within their responsibilities. Finally, if I become aware of science being distorted or suppressed within EPA, I will act to put a stop to it.**

3. Do you believe that the models and data used by the federal government in developing rules should be made publicly available during the rulemaking process so that the public can fully understand and comment?

**I believe that should be done whenever doing so is consistent with EPA's expeditious and efficient discharge of Congress's statutory directives.**

4. Please describe your views on the appropriate role for consultations with the President and other members of the Administration, such as Carol Browner as a Presidential advisor, in making decisions. Could Ms. Browner's position mean that every climate or energy related decision out of EPA be considered as a unitary executive decision and

therefore invoke executive privilege? And, most importantly, will you be deferring to Ms. Browner for any decisions?

**If confirmed I will consult with Ms. Browner regarding recommendations to the President on climate and energy policies that fall within EPA's expertise. If confirmed I will hear Ms. Browner's views on climate and energy policies that fall within EPA's responsibility. If confirmed I will make my own independent judgment with respect to any decision that is delegated to me by Congress. If confirmed I will advise the President directly on matters that fall within EPA's expertise whenever I deem it appropriate. I do not believe that Ms. Browner's position means that every climate- or energy-related decision out of EPA will be considered as a unitary executive decision and therefore invoke executive privilege. With regard to all decisions that Congress directs the EPA Administrator to make, I will if confirmed listen to the views of Ms. Browner and others while not, however, deferring to anyone other than Congress, as represented by the words of its enactments.**

5. Judicial decisions can and do bring significant uncertainty to the agency and the public. As EPA Administrator, how will you govern during times of uncertainty? Do you believe increasing or creating regulation is the best approach to dealing with issues or would you employ different methods? Please explain.

**If confirmed I will work to ensure that all EPA decisions enjoy strong legal support, both because that is my responsibility and because doing so will minimize litigation uncertainty. I believe that some issues are best dealt with through regulations and that some are best dealt with through different methods. In any event, I will if confirmed remain very mindful of statutory mandates directed at EPA.**

6. The Notification of Federal Employees Anti-Discrimination & Retaliation Act of 2002 ("No FEAR" Act) was passed in response to whistleblower and civil rights violations at EPA, specifically relating to the circumstances surrounding the Coleman-Adebayo v. Browner case. Please state how you will implement the provisions of this new law to ensure that EPA employees are not subjected to discrimination or hostility in the workplace.

**I am committed to protecting EPA employees against discrimination or hostility in the workplace. I will review the provisions of this law carefully with the assistance of counsel and do my utmost to comply.**

7. How will you improve communication efforts between the EPA program offices and the EPA enforcement office? Please provide examples of how you will act to improve the communication and overall employee relationships between these offices.

**Communication between all EPA offices is an important priority. It is essential that the Office of Enforcement and Compliance Assurance consult with the program**

**offices whose regulations it enforces. I will if confirmed emphasize the need for this consultation to occur.**

8. While the TVA accident was a tragedy, it is important that this accident not be misused by those who would like to undermine the role of coal as a key component of our nation's energy portfolio. After more than two decades of study, EPA determined in 2000 that fly ash does not warrant regulation as a hazardous waste because, quite frankly, it does not exhibit the characteristics of a hazardous waste under EPA's own regulations.

Approximately 42% of coal ash produced in this country is recycled and used in a variety of applications, saving additional natural resources and preserving scarce landfill space.

We should try to ensure that eventually 100% of these materials are recycled and beneficially reused. Please describe how EPA will act in a pragmatic and thoughtful way in evaluating what, if anything, the Agency should do further with respect to this issue and that EPA continue to work with the States in addressing any gaps in regulation?

**I believe EPA should continue assisting in the cleanup and immediately survey all other sites in the country to determine which of them might pose particularly severe hazards, especially to human life, in the event of a breach. As you indicate, the TVA spill was an unfortunate tragedy, and it underscores the need to assure that other coal-burning facilities are managing fly ash in a safe and responsible manner. Conducting this assessment will be a high priority for me if I am confirmed. I do intend if confirmed to approach this issue in a thoughtful manner and will certainly confer with the states.**

9. To bring to light the views of the states on this issue. Last year, the Environmental Council of the States ("ECOS") – an organization reflecting the views of State environmental regulatory bodies – recently questioned the need for federal controls because the regulatory infrastructure is in place at the state level to ensure adequate management of coal ash. A copy of this letter is attached for your review. Please comment on the perspectives presented in the ECOS resolution.

**If I am confirmed, I will certainly solicit the views of the states on the appropriate management of coal ash. One issue I will examine closely if confirmed is whether the existing regulatory infrastructure to manage coal ash is adequate and effective.**

10. Given that states are concerned that a federal coal ash regulatory program would create an additional level of resources and oversight that is not warranted, would be duplicative of existing state regulatory programs, and require additional resources to revise or amend existing state programs to conform to new federal regulatory programs. As a former head of a State environmental regulatory agency, do you agree that in evaluating what steps EPA should take with respect to the management of coal ash, that it is both necessary and appropriate to take into account both the views and the capabilities of the States in addressing this issue?

**As noted above, the views of the states are certainly relevant and I will consider them closely if I am confirmed.**

11. Regarding the Federal Creosote site in Manville New Jersey, please detail what assurances you can provide that you will look into this mismanagement and what steps you will take to prevent this from happening at other sites under your tenure as Administrator?

**I am aware of the problems that have occurred at this site and the related criminal investigation. This is a significant concern and not acceptable behavior for contractors working for the Superfund program. If confirmed, I will set a very high standard of conduct for the EPA Superfund staff and contractors.**

12. Regarding Department of Defense NPL sites, can cleanup activities occur without Federal Facilities Agreements? How will the Obama Administration handle similar an interagency disputes like the one we currently have between the EPA and DOD? Please provide specifics on how you envision the process working under your leadership?

**At DOD NPL sites, the same high standards of cleanup and accountability should apply as at other NPL sites. Federal Facilities Agreements are very important to the integrity of cleanups by federal agencies and will continue to play a vital role if I am confirmed. I would hope that, under President Obama, DOD and EPA will work closely together with the aim of ensuring that DOD cleanups are protective of health and the environment.**

13. How do you see the EPA Brownfields program evolving under your stewardship?

**The Brownfields program is a very important tool to encourage cleanup and beneficial reuse of contaminated sites that do not warrant attention under the federal Superfund program and can be effectively addressed by the states. If confirmed, I will continue this program and look for opportunities to improve it.**

14. Given the public discourse regarding the EPA's established science for assessing risk and cumulative impacts from chemicals and pollutants, what plans if any do have for directing or changing science policy at EPA?

**I do not yet have any specific planned changes for science policy at EPA. I do, however, intend if confirmed to work expeditiously with EPA staff to review carefully the agency's existing policies for assessing risk and cumulative impacts from chemicals and pollutants.**

15. Do believe that the any of EPA's chemical-related programs, regulations or statutes need substantial adjustment or reform? If so, please specifically describe what programs, regulations or laws and what efforts the next Administration will make to implement and/or support each change.



**I do not yet have a view as to the particular adjustment or reform, if any, that will be appropriate. I do, however, intend if confirmed to examine that question carefully and expeditiously with EPA staff and Congress.**

16. One of the key areas where there can be strong agreement between the majority and minority on this Committee is the role of science in the regulatory process. The EPA and National Academy of Sciences (NAS) undertook a comprehensive review of the chemical perchlorate, which is found at a variety of levels from a variety of sources across the country. Recently, the EPA has asked again for assistance from the NAS regarding the health affects of perchlorate in drinking water. There is considerable activity underway on perchlorate, and top scientific bodies are working in and outside the EPA to reach the best result from a scientific, public health perspective. Will you, as Administrator, pledge to be open to obtaining the best available scientific information on perchlorate, without regard to politics or ideology?

Yes.

17. Under the Safe Drinking Water Act, in order to promulgate a national primary drinking water regulation, the law requires that the Administrator determine the regulation "presents a meaningful opportunity for health risk reduction" and the "contaminant will occur in a public water systems with a frequency and at levels of public health concern." How would you determine if a contaminant occurs at a national level to warrant regulation? Taking time and cost into consideration, how do you plan to prioritize what contaminants receive attention first and which contaminants will receive subsequent attention?

**These elements of the Safe Drinking Water Act are important in assuring that the contaminants under consideration for a national primary drinking water regulation raise significant public health issues that warrant the time and resources of EPA rulemaking and water system compliance investments. Public health benefits as reflected by these criteria will play an important role in prioritizing contaminants for possible regulation.**

18. The Safe Drinking Water Act amendments of 1996 directed EPA to identify affordable technologies for each drinking water standard that the Agency finalizes. If the Agency is unable to identify a treatment technology that is affordable for small systems, it must identify a variance technology that is protective of public health. To date, EPA has never issued or approved a variance technology. Small communities in Oklahoma and across this country struggle with costs of compliance. Will this policy change under your leadership?

**I do not yet know whether that EPA policy will change if I am confirmed. If I am confirmed, though, I would appreciate the opportunity to hear your views on the subject.**

19. Small communities financially struggle daily to meet increasing federal regulations and are unable to secure federal funding. How do you plan to assist communities trying to comply with drinking water and clean water regulations but lack the financial and technical resources?

**As I know from my experience in New Jersey, the resources of small communities can be limited, and we need to be mindful of these resource limits in implementing environmental programs. I believe the SDWA amendments give EPA ability the ability to take the special financial constraints of small systems into account in implementing drinking water standards and it would be my intention to do so.**

20. The legislative debate regarding Clean Water Act jurisdiction will be a controversial issue that the incoming Administration will have to deal with. Please describe what you would like to see accomplished under the Obama Administration regarding Clean Water Act jurisdiction, keeping in mind the federal interests and state prerogatives envisioned in the Clean Water Act?

**The Supreme Court's *Rapanos* decision has complicated the task of determining "waters of the United States" subject to CWA jurisdiction and this in turn has created difficulties for EPA and the Corp of Engineers in administering the Act's wetlands protection program. My approach if confirmed will be guided by a concern for water quality and wetlands preservation while at the same time respecting local governmental interests**

21. Do you believe EPA's interpretation of "waters of the United States" in recent years has been appropriate, overly broad, or overly narrow? Can you please provide examples of waters that are NOT currently considered jurisdictional waters of the United States, but that you believe should be jurisdictional and vice versa?

**This is a complicated subject and if confirmed I will need to fully review the guidance issued by EPA and the Army Corp of Engineers before adopting an approach. Water quality considerations will play a large role in my thinking along with the need for clarity and simplicity in defining the law's jurisdictional boundaries.**

22. The "significant nexus" test has been criticized for leading to arbitrary applications and uncertainty within industry regarding what waters are, and are not considered waters of the United States. Do you agree? How would you as EPA Administrator seek to bring more certainty to industry regarding where Clean Water Act regulation applies? Will you commit to working with my staff in finding ways to improve certainty and increase permitting efficiency?

**I agree that greater clarity and certainty in the definition of "waters of the United States" is desirable and will be a factor along with protecting the quality of our waters and ecosystems in developing an Administration approach. If I am confirmed, I would be very happy to consult with your staff as our thinking evolves.**

23. What is your understanding of the shared role of the EPA and Army Corps of Engineers in implementing the Clean Water Act? Do you intend to seek to modify the shared responsibilities? Do you intend to coordinate with other agencies in implementing the Clean Water Act?

**Both agencies have an important role in administering the Act's wetlands protection program. Other agencies, including DOI and USDA, also have a valuable perspective to contribute. I am sure that CEQ will coordinate a dialogue among the affected agencies.**

24. Do you believe EPA has the expertise in maritime safety and capable of sharing in the responsibilities of regulating and inspecting marine vessels with the Coast Guard in light of the new marine vessel clean water act permitting requirements? Please explain.

**I will if confirmed need to study these new requirements but would seek the maritime safety expertise of the Coast Guard if it would be helpful in performing EPA's permitting responsibilities.**

25. Based on the recent Sixth Circuit federal court decision in, National Cotton Council v. EPA, it appears that the application of many pesticides will be unlawful without a National Pollution Elimination System (NPDES) permit. How will you work with the Office of Water to ensure that American farmers have reasonable, practical access to the crop protection tools needed to make timely applications so as not to jeopardize our competitive position in the world marketplace?

**This decision, I believe, relates to the aerial application of pesticides over water bodies. I will if confirmed need to review this decision closely and will work with the career professionals in pesticide and water programs to develop a strategy for implementing the decision.**

26. On December 23, 2009, the U.S. Court of Appeals for the District of Columbia reversed its previous decision and reinstated the Clean Air Interstate Rule (CAIR) until the EPA creates a replacement. The Court has remanded the case back to EPA so it can "remedy CAIR's flaws" and has indicated to EPA that it expects timely action on a new rule. Is it fair to say that EPA must develop another SO<sub>2</sub> and NO<sub>x</sub> transport rule in the near term? Given the Committee's jurisdiction and our oversight obligations, will you agree to provide the Committee and its staff with timely and pertinent updates as the EPA develops a replacement CAIR rule to remedy the flaws identified by the Court?

**I believe it is fair to say that EPA must take expeditious regulatory action in response to the court's ruling, unless Congress moots the issue with legislation even sooner. I agree if confirmed to provide the Committee and its staff with updates as requested in your question.**

27. In some metropolitan areas of the country, attainment of the existing ozone NAAQS could force extremely expensive controls on many sources and possible even the closure of some sources. Given the draconian measures these areas may be forced to take, should these areas be sanctioned for failing to meet the standard? Do you believe the Act contemplated such drastic measures be taken to reach attainment?

**I believe the EPA responses dictated in the Clean Air Act for instances of failure to attain by a statutory deadline leave room for EPA to ensure that the responses are reasonable rather than draconian.**

28. On February 8, 2008, the U.S. Court of Appeals for the District of Columbia struck down the Bush administration's program for regulating mercury emissions from coal-fired power plants -- the Clean Air Mercury Rule (CAMR). EPA has appealed the decision to the Supreme Court, which will accept briefs until January 21<sup>st</sup>. Should the D.C. Circuit decision stand, isn't it true that EPA will have to develop another regulatory program to reduce mercury emissions from coal-fired power plants? Given the Committees authorizing jurisdiction and its oversight responsibilities, will you agree to provide the Committee and its staff with timely updates of EPA's development of a new Clean Air Act Mercury Rule?

**I do believe that EPA must take expeditious regulatory action in response to the court's ruling, unless Congress moots the issue with legislation even sooner. I agree if confirmed to provide the Committee and its staff with updates as requested in your question.**

29. The increased funding many are talking about for green programs in the economic stimulus plan may not translate to larger budgets for EPA. The regulation of CO2 under the Clean Air Act is likely to put enormous budget demands on EPA and on state and local regulatory agencies to the detriment of other important programs. In making policy decisions at EPA, can you assure us today that you will keep economic considerations, including the state of the economy and well as budget considerations – both federal and state – in mind to the extent they are permissible under current law?

**Yes.**

30. The increased funding many are talking about for green programs in the economic stimulus plan may not translate to larger budgets for EPA. The regulation of CO2 under the Clean Air Act is likely to put enormous budget demands on EPA and on state and local regulatory agencies to the detriment of other important programs. In making policy decisions at EPA, can you assure us today that you will keep economic considerations, including the state of the economy and well as budget considerations – both federal and state – in mind to the extent they are permissible under current law?

**Yes.**

31. Because greenhouse gases are globally dispersed and not like traditional criteria pollutants, how do you view the effectiveness of state programs to control them?

**I believe that some forms of state programs can be effective in this regard as a complement to a federal system that itself exists as part of an international framework.**

32. In a potential nationwide cap and trade regime, what are your views on how legislation can limit the manipulative influence that predatory investors (such as Wall Street investment banks, foreign sovereign funds, or foreign governments such as the Chinese) could have on greenhouse gas markets? Would you support legislative efforts to minimize speculation and manipulation?

**I believe that legislation can, if properly crafted, minimize harmful speculation and manipulation. I would if confirmed support the effort to craft and enact such measures.**

33. Do you think the Clean Air Act is an appropriate mechanism to regulate greenhouse gases? How do you respond to critics, who are bipartisan on both sides of the Hill, who believe that existing environmental programs, like the Clean Air Act and the Endangered Species Act, are ill-suited and outdated to handle climate change?

**I believe that the Clean Air Act can, when applied carefully and sensibly, be an appropriate mechanism for regulating some sources of greenhouse gases. I do not believe that the Clean Air Act and the Endangered Species Act are fundamentally incapable of addressing or accounting for climate change at all. The President-elect does support new legislation in order to provide a comprehensive and fully integrated response to the challenge of climate change.**

34. Can you commit to us today that the Administration will update and inform the Committee and its staff, on a regular and timely basis, regarding the development of any proposed rules under these Acts?

Yes.

35. The cost estimates of various proposals to cap and reduce greenhouse gas emissions vary significantly depending on assumptions with regard to increases in nuclear power and the development and deployment of carbon capture and storage. Can you assure us that any analysis undertaken by EPA will include a full range of assumptions regarding the potential availability and cost of nuclear, CCS and natural gas?

**If I am confirmed any such analysis undertaken at EPA's initiative will include a full range of reasonable assumptions regarding the potential availability of those technologies and fuels.**

36. If granted, the California waiver will allow the California Air Resources Board to regulate over 40 percent of the Nation's auto fleet for fuel economy and GHG emissions. This would be in addition to national regulation by Congress and the DOT under the CAFE program. I am concerned about the potential duplicative impacts of this decision. Will you pledge today that EPA will first inquire into the national impact on the economy (specifically the loss of jobs), the environment, highway safety, consumer choice and the health of the U.S. auto industry before reconsidering the California waiver? Will you make the results of your inquiry known to this Committee?

**If confirmed I will ensure that any future EPA action on the waiver request will reflect all considerations that are consistent with the Clean Air Act's provisions and with EPA's obligation to discharge its statutory responsibilities as expeditiously as possible. If confirmed I will ensure that any future EPA action on the waiver request will be accompanied by EPA's communication to this Committee of the findings that underlie the action.**

37. If the CA waiver is granted, there is a real possibility that three governmental entities (NHTSA, the California Air Resources Board and EPA) could issue three distinct or conflicting sets of rules governing automobile fuel economy this year. In your opinion, please explain why this multiplicity of regulation would be necessary, especially since the aim---in terms of reduction of GHG emissions and fuel economy improvement, are the same?

**If EPA grants the California waiver, it will be because the Clean Air Act calls for that result based on the facts that are identified as relevant in the Act.**

38. There are significant issues that EPA must address when considering approval of any request to classify fuels with mid-level ethanol blends as gasoline, including safety, compatibility with small engines, the potential for consumer misfueling, and vehicle fuel efficiency and emissions to name a few. While some claim testing has been done to address some of these issues, it has been woefully inadequate and has not answered any significant questions to date. What is your opinion about allowing the use of mid-level ethanol blends into the fuel supply? Will you commit to extensive testing of these fuels in non-flex-fuel vehicles to help address the previously mentioned issues before such blends are allowed into the fuel supply?

**I currently do not have an opinion about allowing the use of mid-level ethanol blends into the fuel supply. I commit if confirmed to listening carefully to the counsel of EPA's technical staff and attorneys on this issue, and also respecting the input of stakeholders, including industry stakeholders, on matters such as safety, compatibility with small engines, the potential for consumer mis-fueling, and vehicle fuel efficiency and emissions.**

39. Under Section 209 of The Energy Independence and Security Act (EISA), EPA has an anti-backsliding study requirement due to Congress by July 2009 to determine whether the renewable fuel volumes in EISA adversely affect air quality as a result of changes in

vehicle emissions. Another study required in Section 204 requires an assessment and report on the impacts to date and expected future impacts of the Section 211(o) requirements. In view of the opportunities for corrections emanating from these two studies, as well as the scope of problems already known relative to meeting the EISA standards, the lack of an expected viable cellulosic ethanol sector, the focus on volumetric rather than percentage of fuels actually used, etc – would you support revisiting certain provisions of EISA?

**EPA does not have the authority to revise a Congressional statute, but I do commit if confirmed to discharge the study requirements that EISA directs at EPA in a credible and straightforward way, and to assist Congress with any adjustments that it may consider to EISA.**

40. EISA requires the U.S. fuel supply to include 36 billion gallons of ethanol or other biofuels by 2022. Currently, the maximum ethanol content for non-flex fuel vehicles is 10%. Reduced domestic driving during 2008, coupled with a 11.1 billion gallon requirement in 2009, has resulted in an EPA blending requirement of 10.21% that many consider hitting the ethanol “blend wall” Independent analysis suggest that it may not be possible to meet the 2009 or 2010 renewable requirement without the real danger of hitting the blend wall. Do you think that the current “blend wall” could represent evidence of a situation that warrants a partial waiver in the RFS2 requirement until there are adequate legal means to accommodate the stated volumes?

**I do not currently have enough information to state a firm opinion on this question. I do understand the concern, however, and believe that it does merit careful analysis and attention.**

41. EISA requires Life Cycle Assessment to determine which fuels meet mandated GHG performance thresholds (reduction compared to baseline petroleum fuel replaced.) The methodology ultimately used by EPA in crafting this program will have a significant impact on the overall implementation of the RFS2 program. Do you support inclusion of the indirect land use impacts in the current calculations of the total carbon emissions from renewable fuels? Will the science and methodology employed by EPA be made available in advance of any rule making in order for it to be subject to thorough public and academic review?

**I do not currently have enough information to know the extent to which inclusion of indirect land-use impacts is feasible. I can commit to examining that question expeditiously if I am confirmed. I can also commit if confirmed to working with EPA programmatic experts and attorneys to determine the proper timing and extent of EPA’s communication of methodological information in the public rulemaking process.**

42. The U.S. government currently runs many energy-efficiency labeling programs under the umbrella of the ENERGY STAR program, which was created in 1992. To what

extent can these labeling programs help drive environmentally responsible choices by consumers and business in this country?

**I believe that the ENERGY STAR program can, when implemented effectively, help drive those responsible choices to an impressive degree.**

43. The Agency shares responsibility for the ENERGY STAR labeling programs with the Department of Energy. I am pleased to see that both agencies are pursuing new product programs that will help American consumers and business make responsible purchasing choices. However, I have been told that, in the area of lighting technologies, a lack of coordination and cooperation between EPA and DOE is wasting government resources and creating market and industry confusion. What will you do as Administrator to ensure that this situation is addressed and resolved?

**I have not had an opportunity to explore this concern, but I appreciate your bringing it to my attention. If confirmed, I would appreciate the opportunity to communicate with you and your staff about it.**

Senator George Voinovich

1. Five years ago, 1500 stakeholders – including the EPA and other federal agencies – developed a blue print for Great Lakes restoration called the Great Lakes Regional Collaboration Strategy. Under the President's 2004 Great Lakes Executive Order, the EPA was designated as the lead agency of the Great Lakes federal Interagency Task Force. The Interagency Task Force includes nine cabinet departments as well as CEQ. This came about because I wanted a comprehensive plan like the CERP with the Everglades. After numerous hearings, I discovered that there was no orchestra leader. Unfortunately, five years later, there isn't demonstrable evidence that progress has been made in implementing the strategy's recommendations --- there is little synergy between the agencies.

The Great Lakes National Program Office (GLNPO) is supposed to be the lead coordinating body in bringing everyone together to get work done. However, even with the dedicated staff at GLNPO, the work isn't getting done. In my opinion, a big part of it has been lack of leadership in Washington.

What do you think of the idea of establishing a Great Lakes director at the Council of Environmental Quality or other White House office setting up a director, or orchestra leader, who can coordinate the nine agencies? What other ideas do you have that will ensure that the federal government is a partner with states, cities, and other stakeholders to work on projects that lead to a restored and protected Great Lakes?

**The Great Lakes are under unprecedented stress. I support the President-Elect's plan for Great Lakes restoration, which includes providing resources to support sewage repairs, toxic cleanups, wetlands restoration, and clean beaches; developing a toxics plan that will comprehensively measure current toxic loadings, identify significant sources of new toxics, and develop an integrated strategy for reducing toxic deposits in the Great Lakes; and taking aggressive steps to prevent**



**introductions of invasive species. I agree that improved coordination and renewed commitment from the federal government to elevate this issue and to work with states, cities, and other stakeholders is important. If confirmed, I would vigorously pursue this agenda.**

2. Aquatic invasive species are one of the greatest challenges to the health of the Great Lakes. A new organism invades the Great Lakes about every eight months and can cause ecological and economic damage. Twenty years ago, Congress enacted legislation to require ballast water exchange for ships entering the Great Lakes, but the fact that new invasive species are still entering the lakes shows that this nation needs tougher ballast standards. Based on a Ninth Circuit court opinion, the EPA should regulate vessel discharges, including discharges of invasive species, under the Clean Water Act. The EPA published final rules for vessel discharges in December 2009, and those regulations called for ballast exchange—the current practice in place that is not working. President-elect Obama’s campaign pledge stated a “zero tolerance” for invasive species. Do you have any ideas on how the EPA can help stop invasive species? And if you don’t have a plan for today, will you promise to make this a priority issue for the EPA?

**If confirmed, I would work with EPA scientists and staff, and seek advice from stakeholders and independent experts, Congress, and others to implement the legislation enacted in the 110<sup>th</sup> Congress amending the Federal Water Pollution Control Act to address certain discharges incidental to the normal operation of a recreational vessel. I would also seek advice on how to implement separately-enacted legislation that clarified the circumstances in which EPA and States may require permits for discharges from certain vessels, and required EPA to conduct a study of discharges incidental to the normal operation of vessels. In addition, I would make it a priority to evaluate what steps EPA might take, in consultation with the U.S. Coast Guard and states, to stem the tide of invasive species.**

3. A report to Congress issued a year ago says that about 75 percent of the nation’s water infrastructure repair needs lie mostly in the Upper Midwest and in your very own state of New Jersey. Funding for the State Revolving Loan Fund for wastewater has been cut over the past several years. What is your plan to provide some financial relief to the communities faced with repair of failing and outdated infrastructure?

**EPA can play a major role in accelerating the growth of green jobs using the long-standing Clean Water and Drinking Water State Revolving Loan Fund programs. The President-elect continues to work with Congress in developing an economic recovery plan that meets multiple goals for our nation, including improving the quality of our water infrastructure. Our nation’s needs are very significant. Members of this Committee have relayed a number of good ideas in this regard. As you know, this initiative is being coordinated by colleagues of mine who will soon be in the White House. If confirmed, I look forward to working with the Chairman and other Members of this Committee to implement the economic recovery plan with the urgency and integrity it deserves.**

4. Across the country, communities are facing incredibly costly regulations and enforcement actions, especially in the area of sewer overflow control, sometimes costing one community in the billions of dollars. Yet at the same time, cities are facing declining ratepayer bases and additional hardship caused by the economic downturn. What does EPA plan to do to review its affordability guidelines and to ensure that municipalities have the ability to target limited available to the most important clean water priorities?

**All Americans expect and deserve safe drinking water. The vast majority of people in this country are served by well-managed drinking water systems that consistently deliver high quality tap water to their customers. At the same time, we can never take drinking water quality for granted. The Safe Drinking Water Act Amendments of 1996 authorized the states to grant variances to small systems for drinking water standards that EPA determines are unaffordable. Variances are not allowed for microbial contaminants. EPA is required under the Safe Drinking Water Act to identify affordable treatment technologies for small systems and, if necessary, to identify variance treatment technologies that achieve the maximum reduction that is affordable. In effect, the law requires EPA to allow different levels of treatment based upon affordability in certain circumstances. If confirmed, I would like to evaluate EPA's affordability methodology to assure that it conforms to the Act's requirements and does not inappropriately set a double standard for safe drinking water.**

5. EPA proposed a guidance document clarifying its policy direction on the issue of blending peak wet weather flows based on an agreement between Natural Resources Defense Council and National Association of Clean Water Agencies; however it has not been able to move forward. How will you make sure that where there is a consensus on a given issue, policies are not blocked or slowed by the interagency review process or OMB as they move forward?

**If confirmed, I intend to carefully review the blending during wet weather flows guidance document, and will seek to move a final policy forward as soon as possible. I am mindful of the concerns that have been raised with delays engendered by interagency review of this and other EPA documents, and will discuss potential solutions to these issues with OMB and other agencies.**

6. Since I presume that you will play a key role as a member of the new White House Energy and Climate Council, I would like to hear your views on nuclear power. First of all, would you agree that, while nuclear is certainly not the only solution when it comes to energy independence or climate change, there is no solution without nuclear?

**The President-elect and I believe that the United States needs a full quiver of low-carbon energy technologies in order to curb global warming, and that nuclear power needs to be one of the arrows in the quiver.**

7. As I mentioned at the hearing, the EPA's analysis of the Lieberman-Warner climate change legislation assumes, even with the aggressive growth in renewable energy sources, about 150 new nuclear power plants will be needed by 2050, to achieve the

carbon cap mandate and to meet the growing demand for base-load power. And indeed, the 104 nuclear power plants operating today represent over 70 percent of the nation's emission-free generation portfolio, avoiding 680 million tons of carbon dioxide, compared with 13 million tons for wind and a half million tons for solar. However, those opposed to nuclear power often cite nuclear waste and nuclear plant safety as reasons to dismiss nuclear power from our nation's future energy portfolio. We at this committee happen to know a little bit about those issues. Since 2001, I have participated in 24 committee hearings on nuclear safety, and I chaired seven of those hearings as chairman of the Subcommittee on Clean Air and Nuclear Safety. The conclusion I have drawn from these hearings is that the nation's 104 nuclear plants have been operating safely, in part, because of this committee's vigilant oversight of the Nuclear Regulatory Commission. Regarding the issue of nuclear waste, the NRC, GAO, and others have testified that storing spent nuclear fuel onsite at each power plant, in both dry casks and wet pools, is safe and secure for up to 100 years. This will give us time to pursue building new plants while developing an alternative waste policy that makes sense not only from the technical policy standpoint but also politically acceptable. To that end, I introduced a bill late last year, "U.S. Nuclear Fuel Management Corporation Establishment Act Of 2008," together with Senators Domenici, Murkowski, Dole and Alexander. I would like to get your views on expanding the use of nuclear power going forward.

**I believe that placing a price on carbon emissions across the United States would significantly increase the incentive for private investment in increasing nuclear power generation in this country.**

8. I have served in many different roles during my more than 40 years in public service. During that time I have had to make thousands of decisions, many of which had the potential to affect the lives of millions of Ohioans. I have taken all of these decisions, big and small, very seriously. Whenever it has come time to make those decisions, I have always strived to collect as much information on the issue as I could. It is very important to me that I have all of the facts, so that I can see through all of the politics and the passions surrounding an issue and get to the true reality of a situation, and that my decision be based on those facts.

Should you be confirmed, you will be inheriting an EPA that will be asked to address a plethora of important environmental and health policy issues over the coming years. Many of these policy issues will elicit a lot of passion and of lot feelings on all ends of the political spectrum. Many of these feelings and these passions will not be based on fact and much of likely won't be based on sound science. Can you commit here today, that an EPA under your helm will make objective, science based decisions?

Yes.

9. As you know EPA is fragmented in the sense that there are 10 separate semi-autonomous regions, many of which often times have competing priorities and personalities. It has been my experience that there is not enough leadership from U.S. EPA over these satellite offices. Maybe some of my fellow EPW members have had

better experiences than I, but I could cite dozens of occasions where Region 5 was mishandling an issue in my state and the EPA Administrator or even Deputy Administrators in Washington D.C. would be completely unaware of the situation. Would you commit to carrying out a review of how EPA is structured and consider ways to improve communication and decision making between Washington D.C. and the regional offices?

**Yes.**

10. Growers in my state have expressed concern over EPA's July 10, 2008 Reregistration Eligibility Decisions (RED) that have limited the use of certain soil fumigants including those used in forestry with no viable alternatives. I believe that it should be a priority of EPA to protect the public from harmful contaminants, but my constituents are concerned that the RED has imposed unreasonably large buffer zones for certain agricultural and forestry uses. This has an unintended effect of limiting acres planted, decreasing yields and raising costs for producers and consumers. If confirmed, would you commit to reviewing last year's REDs and working with growers to try and amend the regulations in a way that still protects communities while limiting the burdens currently being born by growers.

**I commit if confirmed to reviewing last year's REDs with EPA's career professionals, including technical and legal staff. I also commit to listening to growers' concerns and to the arguments they make for amending the REDs.**

11. On July 11, 2008, the EPA issued an Advanced Notice of Proposed Rulemaking (ANPR) in response to the U.S. Supreme Court's decision in *Massachusetts v. EPA*, in which the Court found that the Clean Air Act (CAA) authorizes EPA to regulate greenhouse gas (GHG) emissions if EPA determines they cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. The draft Advanced Notice of Proposed Rulemaking for greenhouse gases suggests at times that the regulation of greenhouse gases under programs such as Title V or the Prevention of Significant Deterioration ("PSD") can be managed, even though, as the draft states over 550,000 sources will be affected by at least one of these programs. Do you think the CAA provides "wiggle room" not to apply these programs to sources that emit more than 100 or 250 tons of greenhouse gases?

**Based on my current knowledge, I do believe that the CAA leaves EPA discretion, in the event of regulating greenhouse-gas emissions under the Act, to do so in a way that does not necessitate direct regulation of all emissions sources regardless of their size.**

12. Is it your plan to move forward and develop a Notice of Proposed Rulemaking for the regulation of greenhouse gases under the Clean Air Act? Given the complexity and magnitude of the question of whether and how GHGs could be effectively controlled under the CAA, will you commit here today that the Administration will update inform

the Committee and its staff, on a regular and timely basis, regarding the development of this proposed rule?

**I believe that, if confirmed, I will be under a pending obligation to take action in compliance with the Supreme Court's decision in Massachusetts v. EPA. I commit if confirmed to update and inform the Committee and its staff as requested in your question.**

13. One of the great environmental stories this decade is diesel. The story is threefold and centers on emissions. First, EPA, engine manufacturers, oil and pipeline companies and others have worked together in a comprehensive regulatory regime that by 2010 will result in near zero emissions from diesel engines. Second, with this emissions control technology development has come other benefits such as the introduction of light duty diesels in this country, which deliver low gasoline-like emissions at 20 to 40% less fuel use. Third, although these developments deal with new engines, this Committee has taken strong action with the authorization of the Diesel Emissions Reduction Act to use this technology and reduce emissions from those engines already on the road. All of this has been driven by EPA's and the industry's strong collaboration together in the government's Clean Diesel Rules. This is why I am shocked and seriously concerned about any suggestion of rolling back these monumental rules. However, I know that some groups - albeit a minority - have suggested that by asking for a delay or change in the 2010 standards. At the same time, I know most are ready to meet the regulation as indicated by a press release from the Engine Manufacturers Association on November 20, 2008. I ask you to assure this Committee that as Administrator you will not accept a change in the regulatory structure of the 2010 heavy duty standards -- whether a roll-back of them or delay in implementation.

Also ask you to commit to continued funding for DERA as supported by a large group of environmental, industry and public groups.

**As I stated at the hearing, I am a strong believer in the benefits diesel emission reductions as a cost-effective public health measure. If confirmed, I will do everything I can to move ahead with diesel emission reductions as quickly as possible within the confines of the law, and to making every effort to work with the Obama Administration and Congress to continue to fund the DERA program.**

14. What approach will EPA take to working with the Department of Homeland Security to ensure the security of our nation's chemical facilities?

**If confirmed, I will seek to work cooperatively with DHS to ensure the security of our chemical facilities. My experience in New Jersey has convinced me that this is an important issue that deserves attention.**

15. The authority for regulating the chemical industry purposefully excludes from its coverage water and waste water treatment facilities. Some believe that water and wastewater treatment facilities determined to be high-risk due to the presence of chemicals of concern should be regulated for security in a manner that is consistent with the CFATS risk- and performance-based framework and that recognizes the unique

public health and environmental requirements and responsibilities of such facilities. How would you approach regulation of water and wastewater treatment facilities? Do you intend to modify the agreement between EPA and the Department of Homeland Security?

**If confirmed, I would look forward to discussing with you, other members of Congress, EPA staff, stakeholders, and others what the best approach is to addressing regulation of water and wastewater facilities, and to evaluate the effectiveness of the relationship between EPA and DHS on this matter.**

Senator Johnny Isakson

1. The authority of EPA to regionally regulate air quality is called into question by recent judicial decisions on CAIR (the Clean Air Interstate Act). What is your principal advice to Congress on statute or regulation needed to remedy the current absence of policy governing interstate air regulation?

**I am not yet in a position to render that type of advice to Congress. I do commit, however, that if I am confirmed, EPA will assist Congress in any legislative response to the court's decision and will also keep Congress informed of any EPA regulatory response, so that the two efforts will be well-coordinated.**

2. I participated in an effort with Senator Inhofe to reauthorize the technical assistance provision of the Safe Drinking Water Act which expired in 2003. This provided much needed assistance to community water systems across the country that face several very technical and difficult federal drinking water regulations. Because small communities depend on that program to protect their drinking water quality and to comply with federal mandates, how will you prioritize rural water funding within EPA's budget?

**I have not yet had an opportunity to spread out before me all of EPA's responsibilities and to assign budget priorities to them. If confirmed, however, I would appreciate the opportunity to hear more from you and your staff about rural water funding before I make any final decisions about funding priorities.**

3. Will you uphold the EPA plan to regulate greenhouse gases such as methane, nitrous oxide and carbon dioxide, under the Clean Air Act that would result in new taxes on livestock operations?

**I am not aware of anything that could be described as an EPA plan to do that.**

a. Are you willing to offer an agriculture exemption?

**In discharging any EPA duty to develop new rules under the Clean Air Act, I am willing if confirmed to consider any reasonable and justified provisions that are consistent with the Act's provisions. In assisting Congress with legislation, I am willing if confirmed to help ensure that the coverage of any new mandatory greenhouse-gas system is sensible.**

Senator David Vitter

1. Some of the climate change legislation brought before this committee left the market for carbon credits in the hands of EPA. Do you agree with that policy or should the responsibility be left to an agency with experience in trading such as the Commodity Futures Trading Commission?

**I believe the important thing is that any provision establishing a new cap-and-trade system for greenhouse gases include measures that guard against harmful market manipulation. I do not yet have an opinion as to which agency or agencies should be entrusted with that responsibility.**

2. The Clean Air Interstate Rule has been remanded back to EPA. What are your plans, requirements and deadlines for compliance that we can anticipate?

**I believe that EPA must take expeditious regulatory action in response to the court's ruling, unless Congress moots the issue with legislation even sooner. If confirmed, I plan to work on a regulatory response while at the same time assisting efforts in Congress to address the problem with legislation.**

3. We know we're facing very steep increases in the mandated use of corn-based ethanol in our nation's transportation fuel supply for the next several years. With the drastically increased cost of corn and the various "food vs. fuel" and environmental debates surrounding the use of this fuel, would you consider using EPA's authority to grant waivers or "slow down" the impending increases in the Renewable Fuels Standard to help ease supply constraints and lower prices for consumers?

**I do not currently have enough information to state a firm opinion on this question. I do understand the concern, however, and believe that it does merit careful analysis and attention.**

4. How do you feel about suspending the ESA during times of natural disaster (i.e. hurricane, drought, flooding). In other words, would you put people's livelihoods ahead of the ESA or other environmental regulations?

**If confirmed I would need to show deference to the Department of the Interior on a question such as this, just as I would hope that the Department would show deference to EPA on a matter delegated by Congress to EPA.**

5. What instruments do you see being available at EPA to increase federal funding for water and wastewater programs, specifically for rural water training and technical assistance, groundwater protection, and the source water protection program? Louisiana has many rural water systems and an increase in funding would help those small communities improve their drinking water quality and address EPA compliance concerns.

**I have not yet had an opportunity to become familiar with the array of funding instruments that might be available to EPA for use in funding rural water training and technical assistance, groundwater protection, and the source-water protection program. If confirmed, however, I work with EPA staff and state and local officials to become familiar with all of the ways in which EPA can help, and I would appreciate your advice and that of your staff as well.**

6. If we pass legislation on climate change mandating reductions in CO2 emissions and our trade partners do not enact similar mandates how will this affect domestic industry? In other words, do you think the price of energy has an impact on our ability to retain jobs and industry in the United States and stay competitive internationally?

**The President-elect and I believe that both the United States and the world's other major greenhouse-gas emitting nations must adopt effective policies for reducing their emissions. The President-elect and I believe that adoption of such a policy in the United States is a predicate to convincing the governments of other large emitting nations to do so. The President-elect and I believe that if the United States adopts a strong and well-designed policy for reducing greenhouse-gas emissions, and if the world's other major emitters follow suit with effective policies, then the result will be reinvigoration of American industry and the preservation and creation of good jobs in this country.**

Senator John Barrasso

1. What will be the position of the Obama Administration on the Clean Water Restoration Act which seeks to change the definition of "Waters of the United States" under the Clean Water Act?

**The President-elect has supported such legislation. I will if confirmed assist Congress with legislation to clarify the scope of the Clean Water Act.**

2. Does the Obama Administration believe that Congress, when they created the Clean Air Act, envisioned the Act becoming a climate change tool? Do you foresee any unintended consequences in using the Act in this manner?

**My understanding of the Clean Air Act is that it is expressly written to address harmful air contaminants as they are identified through an ongoing analytical process that is established by the Act. I believe that the mandates that the Act directs at EPA leave room for the agency to regulate any air contaminants newly found to be harmful in ways that are sensible and consistent with the purposes of the statute.**

3. What is your position on the use of the Clean Air Act to regulate greenhouse gasses produced by livestock operations—the so-called "cow tax" that has been advocated by some environmental groups?



**Based on my current knowledge, I believe that the Clean Air Act leaves EPA discretion, in the event of regulating greenhouse-gas emissions under the Act, to do so in a way that does not necessitate direct regulation of all emissions sources regardless of their size. I do not yet have a position on which individual sources should and should not be directly regulated under any new rules that EPA might promulgate to address greenhouse-gas emissions.**

4. A *Financial Times* columnist wrote on December 12<sup>th</sup> that in today's climate change debate in Europe, "Saving the planet demands that people give up holidays, turn down heating and clean their teeth in the dark." He goes on to further say that in this debate "pain is a virtue and halting global warming metamorphoses into a much broader attack on consumerism, materialism, and at the extreme, anything that smacks of the market." Does the Obama Administration believe Americans should dramatically alter what they eat, how they heat their home, and how much they drive, to address climate change? Please address each specifically.

**Neither the President-elect nor I believes that addressing the challenge of climate change should or will require Americans to endure hardship.**

5. You spoke of providing Americans with choices in being able to address climate change. However, the "cap and trade" approach to addressing climate change places mandates on Americans and American businesses. How does this provide choices for Americans?

**A cap-and-trade system is an alternative to the kind of command-and-control regulation that tells each emissions source the amount by which it must reduce its emissions. A cap-and-trade system instead assigns a cost to emission of greenhouse gases by covered entities, and also creates a market for low-cost solutions for avoiding or reducing emissions. Moreover, a well-designed cap-and-trade system can give the value of emission allowances back to Americans in ways that increase their ability to lower their energy costs while increasing their quality of living.**

6. Does the Obama Administration believe energy, construction and agricultural development should be halted in the lower 48 states to protect the Polar Bears at the North Pole, solely because of theoretical threats related to climate change?

**The President-elect does not believe that there should be a halt to America's energy, construction, and agricultural development.**

7. While the number of new regulations issued by the EPA has grown at a fast pace over the years, actual funding to the states has decreased. Part of this is due to budget pressures, but a big part is also related to EPA choosing to not reduce staff or use of consultants. How do you feel about the issue of declining levels of funding to the states to comply with new federal mandates and would you be willing to work to restore that funding through personnel cost controls and consultant reductions?

**As a former head of a state environmental agency, I have myself faced the challenges associated with meeting responsibilities – including federal responsibilities – to protect public health and the environment with shrinking resources. If I am confirmed I will work with state governments to help deploy available state and federal resources in the most effective and efficient ways possible.**

8. Energy policy issues continue to merge with environmental policy matters as the national and international discussion about global warming progresses. Economic issues have recently become extremely important as well. What are your views on how policies on energy, economy and the environment must be coordinated?

**I believe that the nation's energy, economic, and environmental needs can and should be coordinated in EPA's actions to the extent permitted by the statutory mandates under which EPA operates.**

Senator Christopher Bond

1. Last year, news reports and a peer review panel of state-commissioned economists found that the State of California intentionally skewed its analysis of its state climate change plan to inflate falsely the benefits of the plan. How will you ensure that the U.S. EPA does not also falsely inflate the benefits of climate change plans during your tenure?

**If confirmed, I will ensure that all EPA staff fully understand that factual findings entrusted to EPA must not be skewed to favor any particular regulatory outcome.**

2. Last year, the Department of Agriculture warned EPA that its move to regulate greenhouse gases under the Clean Air Act would subject numerous farms and agricultural operations, like dairy facilities with as few as 25 cows or beef cattle operations with 50 head of cattle, to expensive, burdensome air permits previously reserved for big refineries and power plants. The New York Farm Bureau estimated the cost would amount to a \$175 per dairy cow tax. How will you ensure that EPA avoids imposing such expensive and unnecessary costs on American agricultural producers?

**My understanding is that the Clean Air Act does not necessarily mandate that any EPA regulation of greenhouse-gas emissions take the specific form described in your question. If confirmed, I will ensure that any EPA regulation of greenhouse-gas emissions under the Clean Air Act use the latitude afforded by the statute to allow a reasonable and justified outcome.**

3. Do you support regulating greenhouse gases with the National Ambient Air Quality Standards program we now use to control acid rain, smog and soot, which would put local regions in impossible situations of never being able to do enough to solve what is

really a worldwide issue, and therefore at risk of losing their federal highway funds and severely limiting economic growth?

**I do not yet have a view as to how, if at all, the NAAQS program must or should play a part in possible future EPA regulation of greenhouse-gas emissions under the Clean Air Act.**

Senator BOXER. Thank you so much for such a good statement. I am deferring my opening round to Senator Baucus, then we will go to Senator Inhofe, because he has to go. Senator, I am pleased to cede to you my time.

Senator BAUCUS. Thank you very much. Thank you, Madam Chairman.

Ms. Jackson, you heard my statement about Libby. You and I spoke personally about Libby. I personally asked you to come visit Montana, come to Libby, Montana, see what is going on in Libby, Montana. I again make that request to you to come to Libby. Can I take you to Libby?

Ms. JACKSON. Yes, Senator. If I am confirmed, I would like to accompany you to Libby as soon as possible.

Senator BAUCUS. I appreciate that very much.

At this Committee last fall, we held a hearing and released a report documenting the failure of EPA to declare a public health emergency in Libby, despite the clear and documented desire of EPA staff and scientists, when you read the record you will see that is very clear, including Ms. Whitman. She also agreed with the recommendation. But they all based it upon the science, and I am very happy to hear you spent so much emphasis on science. And based upon the science, the recommendation was made by staff, by people on the ground in Libby, and by the EPA regional office, and by the EPA headquarters that a public health emergency be declared. But they were overruled by the OMB and by other political appointees.

Declaring a public health emergency has not been done in this Country. It is allowed under the Superfund statute. But declaring a public health emergency would provide EPA with clear authority to remove some toxic zoolite attic insulation from homes in Libby and take other remedial action. It would also require that the Federal Government provide much-needed long-term medical care for the people of Libby. Libby is a very important community. And the company, W.R. Grace, has not provided adequate medical care. In fact, they keep cutting back, cutting back, cutting back.

So most folks in Libby who have asbestos or asbestos-related diseases have no medical care, or very little medical care. They are just left with grossly insufficient attention. So will you support the declaration of a public health emergency in Libby so that the clean-up will be done right, and so the people of Libby can get medical care?

Ms. JACKSON. Senator, after we visit, and I do see the victims of this tragedy, and it certainly sounds like they are the worst or among the worst of all sites I have ever heard of, I will review the record, which I believe you referenced, and which I believe, based on the science and the recommendations of the EPA staff, will lead to a quick determination on whether or not a public health emergency does exist. I pledge to do that as early as possible. It will be one of the issues on my desk if I am confirmed as Administrator.

Senator BAUCUS. Will you report back to me within 90 days on the status of that declaration?

Ms. JACKSON. Absolutely, Senator. I will report back within 90 days, for sure.

Senator BAUCUS. I appreciate that. I don't want to over-dramatize this, and many of my colleagues have heard me talk about Libby before. But a lot of this for me began with a fellow named Les Scramstad. I showed you a photograph of Les when you were in my office. I remind you, 6 years ago, I was sitting in the living room of a lady named Delia Benefield. These are all employees of W.R. Grace. There was Les, and he said, Senator, I hope you can do something for us. I said, I will. Then he looked at me straight in the eye and he said, a lot of people say they are going to help us, but most of them don't, so I will be watching you. Right then, I said to myself, boy, I have to make sure that Les is taken care of.

Les would come off the hill, up from the mine. He would go home. He would embrace his wife. His kids would jump into his lap. He was caked with dust when he walked into the living room. I have seen those guys come off the hill. They are just dustbins, they are caked with the stuff. And W.R. Grace knew that this stuff was contaminated. They knew it. There is right now a pending criminal case in Federal court by the employees of W.R. Grace. That dust gave Les, I don't know if he had mesothelioma, but he certainly had asbestosis. His wife has it, because she embraced him. His kids have it. He is dead now. He passed away a couple of years ago.

And just think of the guilt he had in giving that disease to his wife and his kids. That is common. The stuff is used in playgrounds, it was used in school yards, it is used in attics. It is throughout Libby. As I mentioned, over 1,000 people now are contaminated. And they don't know yet if they are going to get it, because it is a delayed disease. I have never seen anything like this, as tragic as this. These people are hung out there, just hung out to dry.

So when you come to Libby, I think you will see this, and I am quite confident that you will make that declaration. And thank you very much for saying that you will report back to me in 90 days. Because I am not going to let this slide until we finally get that declaration.

Ms. JACKSON. I understand, Senator.

Senator BAUCUS. Thank you very much.

And one other question. It has to do with the toxicity assessment. In order to know what standards to clean to, you have to know how contaminated it is in the first place. There has been no toxicity assessment yet in Libby. How toxic is the contamination? It is a separate issue. I am not talking about cleanup. And the EPA has never done a toxicity assessment. So I also urge you to commit to fully fund and complete this toxicity assessment for Libby residents so that we know how clean clean has to be. We have yet to know how dirty it is now, how toxic it is now, to know what levels to clean to.

So will you make that commitment, to get that toxicity assessment done?

Ms. JACKSON. Senator, if I am confirmed, I will review the science. I admit that sitting here, I don't know the status of what EPA has already done.

Senator BAUCUS. I understand that.

Ms. JACKSON. But I am happy to review it and to move it toward a conclusion on toxicity.

Senator BAUCUS. Would you mind reporting back to me on that subject, too, when you report back within 90 days?

Ms. JACKSON. Absolutely, yes.

Senator BAUCUS. Thank you very, very much. I appreciate that.

Thank you, Madam Chairman.

Senator BOXER. Thank you.

In these last 13 seconds, I wanted to say to my colleague that you will have, I believe, the full support of this Committee as we move forward. But I also want to remind everyone that, working with Senator Isakson, we were able to write a bill to ban asbestos, which passed through this Committee and passed through the Senate and died over in the House. So I just want to remind colleagues, we will be taking that bill up again as soon as possible. We are introducing it, reintroducing it.

Senator Inhofe.

Senator INHOFE. Thank you, Madam Chairman. Let me finish what I was going to say when I was paying tribute to our two departing Senators and our two new Senators on this Committee, that it is unusual. Because there is some violent disagreement on some issues. And I know it drives the press nuts, but Senator Boxer and I really do like each other. And this is unusual, and Senator Lautenberg, I might say.

But let me just mention, Senator Voinovich is right, I say to you, Ms. Jackson, when he talked about the difficulty, this is no Mardi Gras. This job is really tough. And I know that you realize this. I was very pleased that you singled out just a minute ago in your opening statement, I normally take the time to get a review of the written statement, which I did not do, I confess, but you talked about two things. No. 1, transparency, which is very, very important. And that would come to the first question that I would have for you.

I don't agree with the criticisms of many on this Committee on the current Administration not being forthcoming and providing all the information needed. I think they have. In fact, I would join Senator Voinovich in the kind things he said about Stephen Johnson. There has never been a director, at least in my memory, who has been more qualified. He came up through the ranks, and he has the right scientific background and all that. I think he did a very good job in a very difficult environment.

So I first of all, in terms of being open and responding to us, whether it is the Democrats, Republicans, all Senators, that you will do this, and will be very forthright with us, as I am sure you will. And judging from our private conversation in our office, I think you have that commitment. I would like to get that commitment, to be working with us, Democrats, Republicans, in a very forthright way.

Ms. JACKSON. Senator, if I am confirmed, I look forward to working with this Committee, through its Chair, but also with individual members. EPA has long played an advisory role to Members of Congress on a range of environmental issues, and I would look forward to working with you and communicating with you.

Senator INHOFE. Good. I appreciate that.

The second thing you were very emphatic about was the science. I wrote it down, you said scientific integrity and rule of the law, that is going to drive you. You said the Administration has science as my guide. That was music to my ears. And I hope that includes the recognition that science changes. I know it is difficult and people don't want to talk about it. But things back during the Browner Administration, science was pretty well settled at that time in terms of things like greenhouse gases, climate change. And then so many of those individuals who were solidly on that side have changed.

Now, I am going to ask for a commitment from you, and you had better think about this before you get it to me, I want a commitment that you will take the time in the next, let's say in the next 2 weeks, to pull up the record on my last Monday's speech, it was a whole hour on the floor of the U.S. Senate, on science, and that you will read my speech and then have a private visit with me afterwards some time at your convenience. Would you be willing to do that?

Ms. JACKSON. I am taking the time, Senator.

Senator INHOFE. Oh, I want you to.

[Laughter.]

Senator INHOFE. You can't take more than 3 minutes, because that is all I have here.

[Laughter.]

Ms. JACKSON. I was watching that clock.

Senator, I am happy to exchange views with you at any point on science, and am I happy to read your testimony in advance of our discussion.

Senator INHOFE. Thank you. Since we are almost out of time and you have your roots in New Jersey, I made mention to the Manville Superfund site and how it affects Oklahoma and the lawsuit that is going on there. There are a lot of people who believe that should have been done for about \$20 million. In my opening remarks I commented on so many times that we see the EPA coming in and spending more money, and I believe this is true in some of these cleanups, and I think that has happened in this case. Of course, they are in Chapter 11 now, so I don't know how it is going to come out.

But I would like to know if you would share with us your role in that, and any opinions you want to on that particular creosote site.

Ms. JACKSON. Certainly, Senator.

Senator INHOFE. Very, very briefly.

Ms. JACKSON. Sure. At one point in my career, I was the section chief for Central New Jersey sites. I have been to the Federal creosote site in Manville, before, I believe it was before it was ever listed on the Federal Superfund list.

There are well over 100 people who lived on top of what were essentially wood-treating pools full of creosote. So this site came to EPA's attention because people had oozing coal tar in their basements. And if you know about coal tar, it is particularly aggressive, and it is full of furans and dioxins.

So the site included temporary and I think some permanent relocations of residents, and then basically a rededication of that

neighborhood, because as I recall, the leadership of the town made clear that they wanted to restore it to residential levels. I do know that there has been some legal investigation of contracting practices, actually I should say the practices of the contractors who bid on the work at that site. But I haven't had any direct contact with it since probably the late 1990s.

Senator INHOFE. OK, that is fine. In my office, and I think that in my opening statement I mentioned that the most devastating site prior to its cleanup, and we actually got into this about 6 years ago, was Tar Creek in Oklahoma. As I have said, it is almost, it is 95 percent done now. I just want to be sure I get a public commitment from you, as I have a private commitment, that you will do everything you can to see that into its final stages.

As far as relocations and that are concerned, all that is funded, it is done, pretty much done. And I don't think that anything is going to happen to do that. But do you have the commitment to complete that, as well as then start addressing a huge problem that hasn't been addressed, because we are concerned about saving lives. We didn't know that the subsidence was as bad as it was when we got into this thing. We had an elementary school that could have gone down at any time. So it was serious.

But then we are going to have to deal with the problem of what are we going to have to do with all the pollution that is there, and cleaning that up. I would hope that you would publicly support what we are going to do to complete that site.

Ms. JACKSON. Senator, I first want to thank you, because my understanding is that your support of a subsidence study for that site was extraordinarily important. My guests here, the Ramapough people, live on top of an old mining site as well. So there may be lessons for us to learn in New Jersey from the way that site was handled in Oklahoma.

Senator INHOFE. I think that is right. We were shocked at what we found out. It was quite a surprise. And the fact that it had not been done before, we were dealing in ignorance. We didn't know how many of those roads should have been closed. And we are talking about distances down of several hundred feet. It was just real bad.

I know I am a little over my time.

Senator BOXER. That is all right.

Senator INHOFE. But I am not going to use the second time. I just want to get one last thing in. And this is just to help me out.

A lot of the people with whom I disagree, like former Vice President Al Gore, James Hanson and others, scientific advisors believe that they would prefer a carbon tax fee or a tax over a cap and trade system. Now, I don't want anyone to go out of here saying that I want to have a carbon tax. I don't. But given the choices of those two, I would take a carbon tax, probably for different reasons than Hanson and some of my adversaries would want it. I think it is the more honest way of doing it.

To me, a cap and trade is a way of obscuring what it really costs the American people. When we were dealing initially with the Kyoto Treaty and the Wharton School did the Wharton Econometric Survey, came to the survey that the range of costs would be between \$300 billion and \$330 billion a year, this was, you know,



we needed to get that out so people understood it. If you have a carbon tax, then people are going to know just what it is going to cost.

Do you have any thoughts about carbon tax as opposed to cap and trade?

Ms. JACKSON. Senator, the President-elect has clearly, during the campaign, favored the idea of a cap and trade system to regulate greenhouse gases. One of the reasons is because of the cap part. Going back to my discussion of science, a carbon tax alone, in isolation, does not set an eventual goal for actual reduction of global warming. So you could have a tax that doesn't, at the end of the day, meet the goal of reducing the amount of CO<sub>2</sub>, for example, in the atmosphere. That said, I think the goal is to reduce the amount of global warming emissions and the eventual amount of CO<sub>2</sub> in the atmosphere and reduce climate change.

So I would certainly be open to discussions. I would not want to forestall any more discussion of carbon tax as an opportunity. But the President-elect has said that he believes the cap and trade program is a good way to go for our economy.

Senator INHOFE. Good. Thank you very much, Ms. Jackson. I am looking forward to working with you.

Senator BOXER. Thank you.

Before I start my questioning, there are a couple of things you have to agree to if you want to get confirmed.

Senator INHOFE. In addition to reading my speech.

[Laughter.]

Senator BOXER. In addition to reading his speech, which I think will be very enjoyable, actually, to read it. Because I have heard it, I could give it.

[Laughter.]

Senator BOXER. And he could give mine. This is true.

Let me just say, one of the big disagreements we have on the Committee is that some of my Republican friends think that Stephen Johnson was one of the best administrators and some of us here, many of us have asked for his resignation. So we are not asking you to get into that. That is yesterday and you are today and tomorrow.

So I want to ask you this question first. This one is not official, it is non-official. But in my view, and speaking for several on my side of the aisle, EPA is a shadow of its former self today. Morale is lower than low. How do I know that? Because I am told that by the people who work there. I am not making it up. They have written us letters. They are on the record.

To this day, we keep seeing rollbacks. There was one the day before yesterday. Rollbacks that hurt the people.

So you are walking into a tough situation. And I think you have the persona to deal with it. So this question is, well, it is more of an urging on my part. I would urge you to use your dynamic personality and your character and your experience and the way you have with people to reinvigorate the EPA by assuring its employees that the American people need them, that you need them, that you want them to be strong in protecting the environment and the public health, and using the best science to get to that goal.

And can I have your assurance, this isn't the official, this is just from me to you, your assurance that you will do that with the employees there in desperate need of that leadership?

Ms. JACKSON. With pleasure, Madam Chairman. I would see nothing more important to restoring the health of the people of the United States than restoring the health of the Environmental Protection Agency itself.

Senator BOXER. Thank you.

And these are the official questions. Do you agree, if confirmed as EPA Administrator, to appear before this Committee or designated members of this Committee, and other appropriate committees of the Congress and provide information, subject to appropriate and necessary security protection with respect to your responsibilities as EPA Administrator?

Ms. JACKSON. Yes, I do agree.

Senator BOXER. Do you agree to ensure that testimony, briefings, documents and electronic and other forms of information are provided to this Committee and its staff and other appropriate committees in a timely manner?

Ms. JACKSON. Yes, certainly, Madam Chairman.

Senator BOXER. And do you know of any matters which you may or may not have disclosed that might place you in any conflict of interest if you are confirmed as EPA Administrator?

Ms. JACKSON. No, Madam Chairman, I do not.

Senator BOXER. That is excellent.

I just want to make a point that Mr. Johnson said yes to all of this, and he hasn't been here for 7, 8 months. We have asked him to. So I trust that when you say this, you mean this. And also, we haven't been able to get information. It has been a rough go. And I am glad you answered yes. I am going to hold you to your answers.

Now I am going to get to my questions that have to do with issues that I care a lot about and others do. USA Today conducted their own monitoring of air around schools with the assistance of Johns Hopkins and the University of Maryland, to demonstrate that children in our Nation's schools are breathing polluted air. Personally, I think this was a prize-winning series that they did. The headline says it all: Air Tests Reveal Elevated Levels of Toxics at Schools. The newspaper found that "Pollution at levels that could make people sick or significantly increase their risk of cancer if they were exposed to the chemicals for a long period." That is what they found. Pollution levels that could make people sick and increase their risk of cancer.

And I have talked to you about this. This was about a three- or four-part series. And analysis pinpoints toxic hot spots in 34 States. So this isn't a question of one school. It is 34 States.

So do I have your commitment that upon confirmation, you will immediately ensure that EPA quickly deploys experts to schools where there is an indication of threat from toxic air pollution, publicly release the data and take the steps necessary to address any health threats posed to children? And will you commit to report to me the steps you have taken and your plan for action within 30 days after you are confirmed as Administrator of the EPA?

Ms. JACKSON. Well, Madam Chairman, I am a mom. I am like many mothers in this country. Fifty-three million children go to school every day. And first and foremost, I believe that moms and they and fathers, too, have a right to know that their children are safe when they are in school. I will commit, if I am confirmed, to first and foremost begin to send investigators and samplers out to verify the extent of the problem that we have, to use EPA's current sampling expertise and sampling capabilities to get additional data. Because I think USA Today did what investigative journalists do, which is to find a problem that needs answers, to ask very important questions about what is going on. I think EPA has the expertise and authority to do that.

Within 30 days, we will mobilize, if I am confirmed, to get that information.

Senator BOXER. Well, I can't imagine anything that you could do, well, I will rephrase it. There are so many things to do. But I just think something like that, where the impacts are on our kids, and it is 34 States involved, and I will also add that EPA did rely on information from the EPA in addition to assistance from Johns Hopkins and the University of Maryland. So we are talking about science here, and I know you are going to take a look at how they got there. But this is very important, and I thank you for that.

Another issue which has been brought to our attention is the issue of the coal ash waste that we have seen seep out, first it was Tennessee, and what was the second State? Alabama. In addition, Pennsylvania, 14 years ago it was Pennsylvania. And longer than that, there was West Virginia. So it seems to a lot of us that there is a disaster, that there are disasters waiting to happen out there. And we have seen a couple of them.

So EPA has the authority to act to address the serious threats posed by the virtually unregulated State of coal ash and coal combustion waste sites. Will you commit, after confirmation as Administrator, to quickly, I am not putting days on this, to quickly assess these sites for immediate hazards and use EPA's authority to protect communities, including quickly establish strong standards at these sites under the Resource Conservation and Recovery Act.

The reason this is so important, I would say, is that under the Clinton administration, the way they left it was for EPA to regulate. And the last 8 years, EPA has chosen not to. Under Clinton, they were looking at whether it should be regulated under hazardous waste or solid waste. And as you know, as we look at what is in this coal ash, it is quite toxic.

So would you report to me on the steps you have taken and your plans for acting, not the final conclusion of this, but what you are doing within the first 30 days that you are Administrator?

Ms. JACKSON. Madam Chairman, I think that you put your finger on a very important thing that EPA must do right away, which is to assess the hundreds of other sites that are out there. Many of them, I think it was you who pointed out to me in our meeting, are upgradient, if you will, uphill from schools or from areas where just the physical hazard of having this wet coal ash, if there is a break, can endanger lives immediately.

So I would think that EPA needs to, first and foremost, assess the current state of what is out there and where there might be

another horrible accident waiting to happen. That said, that is only the beginning. EPA currently has and has in the past assessed its regulatory options with respect to coal ash. I think it is time to re-ask those questions and re-look at the state of regulation of them from an EPA perspective. And clearly, that is part and parcel, but can be done separately from a look at the coal technology in terms of looking, as we modernize coal for the future, that is one of the issues which we will certainly have to address.

So in terms of a time commitment, I think EPA staff are currently involved, in some degree, in both of the current spills. So certainly, it is not a problem to commit that if I am confirmed, they will continue to do that. But we will then start to ask the broader regulatory questions.

Senator BOXER. I want to make the point that some of us are going to introduce, I know Senator Carper is going to have authority in his subcommittee over TVA. And we are looking at some legislation that would call upon you to do this. And if we are not satisfied with action, we may move legislatively. I don't want to get to that point, because I think you have the authority to regulate this. It needs to be done.

My understanding is, Congressman Rahall is looking at regulating it under the Mining Act. That to me is unnecessary, since you have the ability to regulate right now. We don't have to pass another law. You could move forward. So I am encouraging you to do that.

I want to make another point about the assessment of the waste. As Senator Baucus talked about, making an assessment of how bad are things. It was pointed out to us that this coal ash represents a lot of different kinds of coal over the years. Some of the waste is more toxic. The irony here is that these are the worst possible wastes that we want to keep out of the air. And that is why we worked so hard to get them taken out of the air with the scrubbers.

Now we have this pile of toxics. And some of it is reused, which is excellent in certain industry products. But the ash that remains is toxic. And there are different levels and contaminants. So in your assessment, I would urge you to look at that. A lot of this waste is stored high above, a holding pond. So we just need very quick action. This is long neglected. You are not going to fix it in a day. But we need to get it fixed.

I have one last question, then I will yield to Senator Isakson.

Last year, President-elect Obama co-sponsored my bill to approve California's waiver request, which you know affects 19 States and a majority of the population. He said he would sign the waiver while campaigning, as did Senator McCain, which was music to my ears, frankly. Do I have your commitment to immediately revisit California's request for a waiver after confirmation and to follow the science, the law and EPA's long history of precedent on such waivers? They have never, ever declined a waiver as they did on this one. Would you respond?

Ms. JACKSON. Madam Chairman, you have my commitment that if I am confirmed, I will immediately revisit the waiver, looking at the science and the rule of law, and relying on the expert advice of EPA's employees in making a determination.

Senator BOXER. I appreciate that. That is all we ask. Science, science, science and the rule of law.

I am sorry, I mis-spoke, it is Senator Barrasso who was here first on the early bird. I am sorry, Senator. Unless the good Senator will yield to you, we have to stick with the early bird.

Senator BARRASSO. Thank you very much, Madam Chairman. I appreciate that.

Senator BOXER. I guess not.

[Laughter.]

Senator BARRASSO. If I could, Ms. Jackson, following up a little bit on the coal ash issues, and I visited with the nominee for Secretary of Energy and the nominee for Secretary of Interior and we talked about clean coal technology and needing to get to a point of energy and self-sufficiency. I just wanted to say with coal ash and some of the concerns that we do not in any way want to limit the potential for additional research, so that we can employ clean coal technology with carbon capture and sequestration. I don't know if you have any thoughts on that.

Ms. JACKSON. Senator, coal is a vital resource in this Country. It is right now the source of generation of about 50 percent of our power. And I think that it is also important for us to say in the same sentence that it is, the emissions from coal-fired power plants are the largest contributor to global warming emissions. So we have to face, square shoulders, the future and the issues of coal and then move American ingenuity toward addressing them.

You mentioned one of the technologies that the President-elect spoke about during the campaign, and that I spoke with many members of this committee about, and that is carbon capture and sequestration. I know you visited with the Secretary-designate. He is fond of saying and has said to me now twice that we must invest aggressively to get a technology that will work, and that will work at full scale. Because we, certainly in this Country, have coal-fired power plants. But other countries, China, India and others, will as well. So we must have a way of dealing with those emissions as well, if we are going to really beat this climate change issue.

Senator BARRASSO. Along the lines of climate change, there was an article in Financial Times last month. It talks about what we are asking people to do. And it said, saving the planet demands that people give up holidays, turn down heating and clean their teeth in the dark. They talk about the pain as being a virtue in halting global warming, and then what happens to all of us as consumers and the lives we live.

Can you talk a little bit about what you view the Administration's role and what they are recommending in terms of how we live our lives, how this is dramatically going to impact people, how we travel, what we eat, how we heat our homes, how much we drive, all in the effort to address climate change?

Ms. JACKSON. Senator, one of the ways that we can begin to address climate change today is through energy efficiency, through changing our habits, our buying habits, the appliances and homes that are available to us to buy, and making them misers when it comes to energy use. And that can happen quickly. It has the benefit of addressing climate change, but also of making us more energy independent.

So I prefer not to think of it as pain as much as individual responsibility. We are at a point where within people's abilities and economic means, we are, we need them to understand that they have an important responsibility in the choices that they make. It is our responsibility, I believe, to give them choices, to give them efficient homes to buy or rent, to give them the ability to cut down on their energy uses, to give them vehicles that allow them choices, that move us toward addressing climate change and emissions.

Senator BARRASSO. As you and I discussed in the office yesterday, with efficiencies, when we get a more energy-efficient refrigerator, we tend to move the other one down into the basement, and then ultimately we have more efficient appliances, but we have twice the number. So we are still using quite a bit of energy.

One of the things that you and I talked about a little bit was that President-elect Obama has indicated that he is going to appoint Carol Browner to direct the integration of energy and environmental policy in the Administration. As you understand it, how will that work? Who will ultimately make the final EPA decisions?

Ms. JACKSON. Well, Senator, final EPA decisions will be made by the EPA Administrator. Ms. Browner's appointment into an Office of Energy and Climate Change will not change EPA's statutory responsibilities, and in my mind, change EPA's other non-statutory responsibilities to advise this body, to advise the President.

Senator BARRASSO. And if the two of you disagree on something in terms of an environmental issue, then how does that work, between you and the White House?

Ms. JACKSON. I believe that if I am confirmed, the EPA Administrator is bound by law to uphold the laws that list the EPA Administrator as the official to implement them. So I will take very seriously my legal responsibilities to enact and uphold and implement the laws that Congress puts forward for the American people.

I am sure that advisors can agree or disagree on any number of issues and her advice and counsel is something I would certainly seek. She has very relevant experience and she will be dealing across Government on many issues with respect to energy and climate change.

Senator BARRASSO. In my opening statement I talked about some laws passed a number of years ago that are now being used or interpreted in different ways than I think were the initial intent of the law. I would ask, will you follow these reinterpretations or come back to the Congress and say, could you please clarify this so we know exactly what you are talking about?

Ms. JACKSON. Senator, I think that the beauty of many environmental laws is that they were meant to address not only the issue of the day but the issues of potentially tomorrow. I think that that is the hallmark of what makes them strong in many cases.

So what I can commit to, and what I would be happy to commit to is an ongoing conversation and communication, so that we understand each other's views, even if we don't necessarily agree on all of them, and get input from this Committee, from each member and through the Chairman from the Committee as well.

Senator BARRASSO. My last question, there have been a number of regulations issued by the EPA and have been growing at a fast pace over the recent years, with certain costs passed on to States

without money to help. While the EPA hasn't lowered its budget, the unfunded mandates, if you will, to the States has grown. As a former State Senator, I am very familiar with some of those.

Could you talk about that and the mandates that have come to the States and the expense to the States? Is that something that you are going to be cognizant of and work on to try to make sure that those expenses are not borne by our States without additional funding from the Federal Government?

Ms. JACKSON. Senator, the budget realities for States are playing out in the news media every day. Environmental programs are certainly not exempt from decreasing budgets. It is very true that EPA budgets over recent years have flat-lined at best State programs and State grants that are meant to pay for personnel. We see the same thing in grant programs like the State revolving fund, money that has been cut, that funds tremendously important work on water quality.

So what I can commit to, obviously the EPA Administrator has a role in formulating the President's budget, and clearly, in looking at that role, I would look very strongly at the work that States do. As a former State commissioner, I know how hard we work and I know how efficiently we try to do it. Much of the permitting work and enforcement happens at the State level and some at the local level. So we will do what we can to find the appropriate balance between national leadership on environmental issues and State implementation and local implementation.

Senator BARRASSO. Thank you, Ms. Jackson. Thank you, Madam Chairman.

Senator BOXER. Thank you.

Before I call on Senator Lautenberg and then Senator Isakson, I ask unanimous consent that all letters of support for Ms. Jackson be included in the record.

Without objection, so ordered.

[The referenced documents follow:]

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January 14, 2009

The Honorable Barbara Boxer  
 Chairman  
 U.S. Senate Committee on  
 Environment and Public Works  
 410 Dirksen Senate Office Building  
 Washington, DC 20510-6225

The Honorable James M. Inhofe  
 Ranking Member  
 U.S. Senate Committee on  
 Environment and Public Works  
 410 Dirksen Senate Office Building  
 Washington, D.C. 20510-6225

Dear Chairwoman Boxer and Ranking Member Inhofe:

Thank you, Chairwoman Boxer for your continued leadership and service to the Nation as the Chair of the Senate Committee on the Environment and Public Works. I also thank you Ranking Member Inhofe for your leadership on this Committee.

I am honored to submit this letter of support on behalf of Commissioner Lisa P. Jackson on her appointment by President-elect Barack Obama to be the next Administrator of the Environmental Protection Agency (EPA). Commissioner Jackson's selection is an appointment that I know is well deserved. I am confident that Commissioner Jackson possesses the acumen, judgment, and experience to be an excellent Administrator of the EPA. She will serve the Nation well. Throughout her career spanning over 25 years, she has demonstrated her commitment to the environment and environmental management. She has been consistently recognized for her insight and leadership in all of previous positions in public service.

For the past three years, Commissioner Jackson served as commissioner of the New Jersey Department of Environmental Protection. As of December 2008, New Jersey Governor Jon Corzine selected her to be his chief of staff.

As Commissioner of New Jersey Department of Environmental Protection, she has overseen implementation of the state's climate plan, which aims to reduce greenhouse-gas emissions to 1990 levels by 2020 and to 80 percent below 2006 levels by mid-century.

Commissioner Jackson has led a large and diverse and managed the day-to-day



operations of large organizations. As Commissioner of the New Jersey Department of Environmental Protection (DEP), Commissioner Jackson led a staff of 3,400 professionals dedicated to protecting, sustaining, and enhancing New Jersey's water, air and law, and preserving its wealth of natural and historic resources.

Before working as chief of staff for Governor Corzine, Commissioner Jackson served as the DEP's Assistant Commissioner for Land Use Management. Under her leadership, the DEP crafted regulatory standards for implementing the landmark Highlands Water Protection and Planning Act.

Upon joining DEP, Commissioner Jackson served as Assistant Commissioner of Compliance and Enforcement. As the state's chief environmental enforcer, Jackson led pioneering compliance sweeps in Camden, NJ and Paterson, NJ where families live in close proximity to regulated facilities. Under the guidance and direction of Commissioner Jackson and working in conjunction with county officials, State Police and U.S. Environmental Protection (EPA), the DEP then mobilized more than 200 inspectors to conduct more than 2,100 compliance investigations and issues more than 500 violations in the two cities.

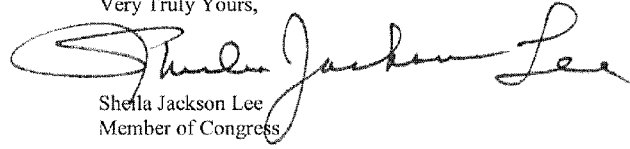
Prior to joining DEP, Commissioner Jackson served for 16 years with the EPA, initially at its headquarters in Washington and more recently at its regional office in New York City. During her tenure at the EPA, Jackson worked in the federal Superfund site remediation program developing key hazardous waste cleanup regulations, overseeing hazardous waste cleanup projects throughout central New Jersey and directing multimillion-dollar cleanup operations. She later served as deputy director and acting director of the region's enforcement division.

In 2007, I was pleased to invite Commissioner Jackson to participate in the Congressional Black Caucus Energy Brain Trust that I hosted. I invited a number of experts in the area to opine upon the theme of "High Gasoline Prices and High Utility Costs: Building Bridges between the African American Community and America's Energy Industry" I was particularly pleased that she was able to offer her insight and share her expertise on various ways to manage the environment.

Commissioner Jackson currently serves on several boards and committees, including the NJ Outdoor Women's League, Inc., New Jersey Sustainable State Institute, New Jersey Development Council, NJ Intergovernmental Protection Commission, the Executive Committee of the Natural Resources Leadership Council of the States, the Board of Trustees for Prosperity NK, FIX DMV and the Governor's Intergovernmental Relations Commission, in addition to serving as Chair of the Ozone Transport Commission and Vice Chair of the Environmental Council of the State's Compliance. The New Jersey Conference of Mayors named Commissioner Jackson the 2007 Cabinet Member of the year.

I am delighted that President-elect Obama has appointed Commissioner Lisa P. Jackson as the Administrator of the EPA. I know that she will swiftly be voted and confirmed as our next EPA Administrator. I recommend her without any hesitation or reservation.

Very Truly Yours,

A handwritten signature in black ink that reads "Sheila Jackson Lee". The signature is fluid and cursive, with the first name "Sheila" starting with a large, decorative loop.

Sheila Jackson Lee  
Member of Congress

**The Sierra Club New Jersey Chapter Welcomes You!**

## **NJ Sierra Club - Lisa Jackson Great Choice to Lead EPA**

Date : Mon, 15 Dec 2008 13:10:02 -0500

Today at 5pm EST, President-elect Barack Obama will announce Lisa Jackson as his nominee to head the Environmental Protection Agency. The following is the statement of the New Jersey Sierra Club on her nomination and a rebuttal to the false accusations made by her detractors.

For Immediate Release Contact: Jeff Tittel

December 15, 2008 (609) 558-9100

NJ Sierra Club: Lisa Jackson Great Choice to Lead EPA

Trenton - The New Jersey Sierra Club strongly supports Lisa Jackson to be head of the Environmental Protection Agency. We believe Jackson will make an outstanding administrator and is a great addition to President-elect Barack Obama's green team.

"It is very rare in government to find someone who has strong technical and scientific background, a clear understanding of policy, a long regulatory history, the ability to work with different types of people and interest groups and very strong environmental principals," said Jeff Tittel, Director of the New Jersey Sierra Club. "We believe Lisa Jackson is clearly going to be a major part of President-elect Obama's green team and that together they will tackle the problems of climate change, toxic site cleanups and protecting the environment for the people of the United States."

Jackson has 19 years experience working up the ranks as an EPA staff person and six years of experience with New Jersey Department of Environmental Protection (DEP). During her tenure as commissioner of the DEP she worked closely with the Sierra Club and other organizations to push the state's environmental agenda forward. In addition, as a native of New Orleans lower 9th ward, Jackson's family suffered through Hurricane Katrina. She brings a clear understanding of environmental justice and the failure of government to act on climate change.

"The EPA under the Bush Administration is broken, Lisa Jackson is the right person to bring that agency back to the forefront of environmental protection," Tittel said. "Lisa Jackson is part of the change that we need."

Lisa Jackson Has No Peers - A Rebuttal to False Accusations

Lisa Jackson has worked closely with the Sierra Club and other organizations to push New Jersey's environmental agenda forward. These achievements have been made in difficult times, with a governor more concerned with economic growth than environmental protection.

"We believe Lisa Jackson has been our one true friend in this administration and has worked diligently to protect the environment for all of New Jersey," said Jeff Tittel, Director of the New Jersey Sierra Club. "On numerous occasions Jackson openly disagreed with Governor Jon Corzine, fought to stop environmental weakening by the state legislature, and promoted new environmental initiatives."

Widespread reporting of Jackson's likely nomination has prompted false and derogatory statements from naysayers, primarily outside of New Jersey. She has worked closely with more than 120 environmental and community groups in the state and only one organization has criticized her.

"There has been a lot of misinformation, false and even malicious statements regarding Lisa Jackson and her tenure at the Department of Environmental Protection," said Tittel. "These attacks are based on half truths and faulty information."

In addition to factual errors, Tittel explained the attacks are based on a double standard. Eight years ago the nomination of Governor Christine Todd Whitman to the same position prompted criticism of her environmental policies. The blame was not put on then DEP Commissioner Bob Shinn. Now, we see an attack on Commissioner Jackson for the policies of Governor Jon Corzine.

Many of the attacks on Lisa Jackson are based on decisions made by Governor Corzine, Commissioners Campbell and Shinn, and Governors McGreevy and Whitman. These are situations she has inherited from previous administrations.

The following list debunks the claims and accusations:

**Site Remediation Program** - The most significant issue of concern is Jackson's involvement with the Site Remediation Program. However, the program was already under duress when Jackson took control of the DEP. In 1994 Governor Whitman eliminated more than 1/3 of DEP staff and reduced total work hours by an additional 16%. The Site Remediation Program was severely impacted. In 1994 there were 270 case managers and 12,000 contaminated sites, currently there are 150 case managers and 20,000 sites. In addition, Governor Corzine has issued a hiring freeze for state personnel, causing the DEP staff to drop by an additional 15%.

**Claim:** Jackson has let cases sit untouched for too long. **Fact:** Former DEP Commissioner Bradley Campbell eliminated the priority system for ranking contaminated sites, and unilaterally removed 1,800 contaminated sites from list, including the Kiddie Kollege Site. Under Campbell's leadership the program focused on developing sites and allowed polluters to pave and wave. Lisa

Jackson has tried to re-enact a priority system and fix the broken program.

Claim: DEP mismanaged the Kiddie Kollege site. Fact: It was a DEP staff person under Lisa Jackson who uncovered Kiddie Kollege. Prior to notifying families it was necessary for the DEP to complete investigation and testing of the site. Testing may have taken longer than it should have but sometimes government doesn't work as quickly as we would like.

Claim: Jackson didn't go after polluters. Fact: The Attorney General has eliminated environmental crimes making it difficult for DEP to go after polluters. Jackson has done sweeps in Camden, Paterson and Newark going after polluters.

Claim: Jackson supports privatizing cleanup. Fact: Gov. Corzine has called for privatizing the Site Remediation Program, not Jackson. Jackson fought to increase personnel, but was stymied by the governor and legislature.

Claim: The EPA had to step in on sites where the DEP wasn't acting. Fact: Gov. Whitman changed the law to allow a voluntary cleanup program under which the polluters to select their cleanup plans. This regulatory change, combined with a lack of staffing and an Attorney General that won't sue has left Jackson's hands tied.

Global Warming - Gov. Corzine did not initially support New Jersey's Global Warming Response Act. Commissioner Jackson convinced the governor to support this important legislation. New Jersey is now praised for its strong emission reduction targets and high renewable portfolio standard. Jackson also took a weak Energy Master Plan that supported fossil fuels and nuclear power and worked to change it so that it now promotes renewable energy and energy efficiency.

Claim: New Jersey is behind on Regional Greenhouse Gas Initiative because of DEP. Fact: New Jersey has missed numerous deadlines (one on RGGI). It took the legislature longer than it should have to pass the necessary legislation so that New Jersey could participate in RGGI; it was not the fault of DEP. New Jersey will be in December auction.

Claim: DEP delays have slowed the Greenhouse Gas Report. Fact: The Greenhouse Gas report has been delayed because of the time it takes to get governor to sign off. It is scheduled to be released this week. Also, it was necessary to complete the Energy master plan before the Greenhouse Gas plan.

#### Additional Concerns

Claim: Lisa Jackson has not developed wildlife criteria for certain toxic chemicals. Fact: In fact there was a rule proposal that was pulled down by her predecessor commissioner Campbell. The fault lies on Campbell.

Claim: Jackson did not give out sign in logs of her meetings as Commissioner. Fact: The practice of not maintaining sign in logs was started by Commissioner Campbell. The Sierra Club opposes this practice, but regrettably it is still in place.

Claim: Jackson took down streams that were nominated for upgrade classification. Fact: Jackson nominated more than 900 miles for Category 1, the state's highest level of protection. Her support is inherent in the nomination. Of the 900 miles proposed, 600 miles were adopted. The remaining 300 were not adopted because of incomplete data and pressure from the governor's office that had the final say.

Claim: Jackson eliminated 300 foot buffer. Fact: Commissioner Jackson signed an Administrative Order for 300 foot buffers. She removed the order when the new flood hazard rules were adopted, which codified 300 buffers on high quality streams. These flood hazard rules are now some of strongest in the nation allowing for no net fill in flood prone areas.

Jackson should be credited with regulating development on septic systems, which is the biggest problem for groundwater pollution in private wells in New Jersey. These water quality planning rules removed 300,000 acres of environmentally sensitive land from sewer service areas which severely restricts the amount of development that can go into these areas. This has been the largest protection of private land through regulation in New Jersey since the passage of the highlands act.

Claim: Jackson's big outgoing action was to convene an industry-dominated task force that recommended rewriting the rules for building permits. Fact: The much-maligned permit efficiency task force was Jackson's way of curtailing Corzine's pro-builder tendencies and slowing attacks for the DEP by the legislature. The task force was made up of former government officials, attorneys, environmentalists, and representatives from the business community. The process was transparent; all the minutes and draft papers were posted on web. The final report was very critical of Governor Corzine's hiring freeze and the need for technical updates within DEP. In addition it blamed private consultants for most of the delays in DEP and wanted to give the agency more authority for environmental impact.

Claim: Jackson did not adopt endangered species rules. Fact: Jackson wrote and proposed rules, but Governor Corzine has not signed off on them.

Claim: Jackson did not act on Permit Extension Act Fact: Jackson forced the governor to revise the notorious Permits Extension Act, which would've extended building permits into environmentally sensitive areas. (That bill was such a galling giveaway that even Bush's EPA protested.) Jackson stood up to her boss and took out 75% of what was bad in that law.

Claim: Lisa Jackson pulled back groundwater standards. Fact: Jackson proposed very strict standards for protection of groundwater from contamination. Under pressure from the business

community the governor would not allow those rules to be adopted.

**Claim:** Since she was slated to be Chief of Staff Jackson must be in line with Corzine. **Fact:** Jeff Ruch, from PEER's Washington DC office is quoted in numerous newspapers saying, Lisa Jackson must be in lockstep with Jon Corzine on policy otherwise he would not have made her Chief of Staff. This statement shows Ruch's inexperience with New Jersey politics. Jon Corzine likes to create conflict; he hired Lisa Jackson to be the antagonist, and made Gerry Zaro head of economic development to be protagonist

"Her critics are the naderite nabobs of negativity," said Tittel. "They are part of the loony lemming fringe of the environmental movement."

Senator BOXER. Senator Lautenberg.

Senator LAUTENBERG. Ms. Jackson, I am, as you know, a fan of yours because of the work that you have done. So I am enthusiastic about your being here. The fact that our good friend and former Senate colleague Jon Corzine, Governor Jon Corzine, who recognized your ability and encouraged and supported pro, positive environmental law while you were there, and was extremely disappointed at the fact that you were going to be leaving his cabinet, but certainly encouraged you to be interested and to take this job, because he knew that we needed your kind of talent and commitment at EPA.

So I just wanted to make a note of the fact that it was Jon Corzine that I checked with to say, hey, Jon, how does this go. He said, well, those little words perhaps for New Jersey, but a lot better for the Country. And my friends from Ringwood are there, Vivian and Wayne Mann and Jay Van Dunk and Veronica. And I want to make a commitment to you, supported by the knowledge that Lisa Jackson is going to be chairperson of the EPA, that we are going to work with you. We know each other and I feel in some ways like you are part of my group. I have been up to visit, as you know, and seen you there and seen how dismal things are by the threats of toxic pollution. When in fact, Madam Chairman, the EPA discharged this site in Ringwood, New Jersey, and it pervades the whole community, as being all set and everything done. If you walk around, you see these huge paint slogs that have been put there by the Ford Motor Car Company, just dumped there and continuing to be dumped there. What it does to the threats to childhood growth and health is awful.

So we are going to get a lot more done, I can promise you that. Ms. Jackson has a way, she said if confirmed, if confirmed. This is an engine that can't stop, I can tell you.

[Laughter.]

Senator LAUTENBERG. So I want to say that you were instrumental in writing New Jersey's global warming law, it calls for 80 percent reduction in greenhouse gas emissions by 2050. And as Chairperson Boxer knows, we worked very hard to get a bill through and we came awfully close. But the forces, negative forces stepped in and wouldn't permit it to happen.

What lessons did you learn that can help you here with the EPA to finally work to regulate these emissions that cause global warming? What did you learn that you can employ in the new situation?

Ms. JACKSON. Senator, thank you for the kind words. The States consider themselves, as you know, laboratories for invention, for democracy. And the States have, in the absence of any Federal program, moved forward with programs that I think on many levels provide extraordinarily important guidance to EPA and possibly to folks outside the EPA. We now have operating a modest, a small, modest cap and trade program for CO<sub>2</sub> emissions in 10 States in the Northeast. It is not a perfect program, it was not designed to be an all-encompassing step. It was designed to be a laboratory, to show people that States could come together and begin to regulate these emissions and deal with some of the real issues of governance and market manipulation and how do you ensure against those kinds of issues, so that we would have some real world experience.



So I look forward to sharing that experience with those who want to on this Committee and working within EPA and building on it. We look every day in States, or we did when I was commissioner, we still do, I am just not there to do it, but States look every day at energy-efficiency issues and energy usage issues and renewables at a very different level than the Federal Government does. They are where the rubber hits the road, where work happens in terms of energy efficiency and retrofitting homes and weather-proofing schools and businesses and people's houses.

So there is a tremendous amount that States will be able to do along with municipalities in terms of implementing the kind of energy efficiency programs that will turn the tide on our energy usage and buy us some real reductions in global warming emissions.

Senator LAUTENBERG. Well, what it says is that we have to try whatever we can to eliminate or certainly reduce this attack on the well-being of our families, our children, our grandchildren. And I in this Committee room the other day called it a plague, the likes of which has never been seen in the history of man, that we are now facing something that unchecked, unchallenged, can affect the health of future generations to a disastrous level. So when we talk here, as we often do, about job loss, it is a very serious thing.

But we also talk about a green condition that will employ lots of people and new enterprises, getting our society and our functioning converted to a positive system. I am pleased that I was author of legislation that said that the Federal Government must follow a green standard. We are the largest occupant of property in the Country. And a significant part of our greenhouse gases come from just the buildings standing there that otherwise could be contributing to a positive effect against greenhouse gas, by making some changes. And new construction or the renovations by the Federal Government are going to follow that standard.

Madam Chairman, I assume the record will be held open?

Senator BOXER. Yes.

Senator LAUTENBERG. I thank Ms. Jackson for being here. Thank you.

Senator BOXER. Thank you, Senator.

Senator Isakson.

Senator ISAKSON. Thank you, Madam Chairman.

You have been given a lot of deadlines and ultimatums and there was talk of demanding resignations. I am here to tell you I have no ultimatums, I have no demands and time limits. And given your qualifications, I am sure that resignation would never be a consideration.

However, 33 years of running a business and 32 years in elected office, I have a suggestion for you to consider. Most people in regulatory, all people in regulatory positions in Government have two choices. They can presume that their relationship with those they regulate is automatically adversarial, or they can look to find partnerships to solve problems through those they regulate. The Chairman mentioned the asbestos bill a little bit ago, when I wasn't here. Senator Murray and I were the co-authors of that, and we passed through the Senate an asbestos bill. For the first time in 37 years, Congress actually got to the point we could ban asbestos.

But because there is one use of asbestos which is an industrial chlorine filter, for which there is no substitute at the present time, because we provided for a transitional phase-out of that asbestos rather than automatic drop, the House rejected it, and today asbestos is not banned, it is not regulated. An intolerant attitude caused a problem to be perpetuated.

In my opening remarks, I mentioned the Atlantic Steel site in Atlanta where Carol Browner granted a waiver from the Clean Air requirements to allow us to build a bridge. What I didn't tell you about that was that bridge was to the Atlantic Steel brownfields site, a site that for 17 years had been abandoned, locked up, couldn't be used. Because of Ms. Browner's waiver with the developer, the developer then took that site, redeveloped it, replaced all the soil and today it is a town of 25,000 people and an urban city and the private sector solved the problem, because the regulator saw the benefit in partnership versus litigation.

So all I want to do is tell you that my attitude has always been, try and find ways you can do things that cause the right thing to happen, rather than presume that you are going to turn over your responsibility to a judge. Because ultimately, adversarial attitudes cause judicial results. Many times, that is coming from people who aren't as qualified to make the decision as you and those you regulate might be.

So I apologize, that was a mini-speech, but I just had to get that out.

Second, and I will just go to the two questions I raised in my opening remarks, in Catoosa and Walker County, Georgia, they remain restricted because of air quality standards. Yet even the EPA recognizes the pollution is not point generated in either Catoosa or Walker County. It is generated in Tennessee, and other States. I hope you will consider, in these unintended consequences, wherein clean air standards, even clean water standards, point pollution is where you address the problem, at the source, not the unintended victim, somewhere either downstream or downwind. We ought to be able to find ways to allow those communities to transition, rather than just totally put them in a punitive non-attainment status. I hope you will consider that.

Ms. JACKSON. Senator, I am happy to consider it, as still a resident of a State that gets one-third of its air pollution from outside its borders. As I think Senator Carper said, we are downwind States. I certainly know the conundrum of needing stronger controls upgradient in order to even have a chance of meeting attainment, for example, in the State of New Jersey.

Senator ISAKSON. Well, it actually is the reason why there is a joint role between the States and the Federal Government in terms of these standards. Because there are times that States' self-interest actually can use the law to its advantage to not do something because the victim is downstream getting penalized. So Federal oversight can help to harmonize those two adjoining States or those two adjoining communities.

Everybody giggled in my opening remarks when I talked about naturally occurring methane. But agriculture is the biggest business in Georgia. And the Georgia cattlemen and the Georgia Farm Bureau are very concerned about the regulation of greenhouse

gases and the unintended negative effect of maybe taxing cattlemen or other livestock producers who have cattle that emit methane naturally, as they have since God created the earth.

So I hope you will consider, in that type of a situation, when you have something that is totally beyond the control of the farmer or the rancher, that you will, rather than levying taxes without consideration for where the source might be and whether it is natural, that you will take into consideration that source and that it is naturally occurring.

Ms. JACKSON. Senator, I think that what is very important here is recognizing that there will need to be a look across the economy at sources, but also a reasonable look. If I am confirmed, one thing I can certainly pledge is that we will be reasonable and thoughtful and deliberate about moving toward a regulatory environment that addresses CO<sub>2</sub>. And I am sure cattlemen and ranchers are not the only people who are worried. Many people across our economy are worried about what it means to begin to embark on this new world of CO<sub>2</sub> control.

So my commitment would be that if I am confirmed, we will have those conversations, we will try to work with this Committee, we will work with members and we will work with individual stakeholders to hear their concerns. But also with the recognition that all industries have the potential to do environmental harm, and what we need to do is to work with them, and sometimes to regulate them in order to make sure that they are ready for our future as we begin to address global warming gases.

Senator ISAKSON. I appreciate that. And my last comment would be particularly with regard to EPA and EPD, in the various States, soil sediment and erosion control issues are tremendous because of the Clean Water Act. And in Georgia, we went for a number of years with an arbitrary methalometer was the determinant for all suspended particles and turbidity units in water. And the EPD in Georgia regulated soil sediment and erosion control standards by using that arbitrary determinant of suspended particles.

When it turned out in the spring, pollen became a suspended turbidity unit in the water, it wasn't somebody polluting it or runoff or anything else. And we changed our management practice to use BMPs, best management practices, rather than arbitrary measurements. So I would just encourage you, as you find ways to mitigate problems, find ways to seek solutions, to reduce pollution, that you recognize the tremendous difference of soil erosion, sediment from State to State, from region to region, and use management practices as the best determinant rather than some arbitrary piece of equipment that determines the number of units that puts somebody automatically in violation, when in fact again, they might not have had anything to do with what contributed to the suspended particles.

So best management practices and a partnership approach with the private sector can solve a lot of problems and keep us having the cleanest environment in the world. And I wish you the best of luck.

Ms. JACKSON. Thank you, Senator.

Senator BOXER. Senator Isakson, thank you.

We are going to hear from Senators Whitehouse, Carper and Merkley, in that order. If a Republican comes back, we will work him in between.

I wanted to just state on this conversation you had with Senator Isakson, a very important one, and he is right, there are some who are worried about a regulatory regime, cap and trade, however we move, which is the one I think we will go to, they are worried about it. But I can assure you, Ms. Jackson, something I think you know, because I have looked at the polls, 80 percent of this Country are much more worried about the fact that we have done nothing on CO<sub>2</sub>. And we know the ravages of global warming.

So while we must work with those who will have to reduce the output, and whether it is, and there are challenges out there. The one thing I want to say as Chair of this Committee, to my friend, Senator Isakson is, I hope he realized in the last bill that we did, we were working hard to make sure that there were resources, so we could find out how we get the clean coal, so that we could reward farmers who work with us and build that into whatever regulatory regime that we have.

So yes, there are those worried about regulating carbon. But far more Americans are concerned that we haven't done anything, truly, in terms of a national policy. States have been the leaders. We have so many States, including your own, my own and others. Anyway, that is just an editorial comment.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman.

Ms. Jackson, there is obviously some dispute on this Committee about whether the EPA is an agency in distress or not. My information is that dispute does not extend to EPA. I think that the career people know pretty well what has happened to them in the last 8 years and that very significant damage has been done to the institution.

And it is not just me saying this, it is the GAO pointing out that EPA processes are without transparency and inconsistent with sound science. The Union of Concerned Scientists pointing out systematic interference with EPA scientists, 60 percent of them indicating that they had been interfered with in their work for political purposes. Jonathan Cannon, who served in the Reagan and Bush EPAs, pointing out extreme friction, institutional damage, demoralized staff. The EPA's own Clean Air Standards Advisory Committee critiquing, repeatedly, EPA's activities, including its chair testifying that standards were set by fiat, behind closed doors, that OMB and the White House truly set the standard, and that willful ignorance was the result.

The United States Court of Appeals for the D.C. Circuit has repeatedly critiqued EPA legal analysis using Alice in Wonderland examples. Other people on this Committee may disagree, but I think there is a real problem there, and there has been a very significant problem there. Although that is yesterday, yesterday bears on today. Yesterday bears on today through EPA advisory panels that may still contain industry representatives that have been packed onto the panel in order to influence the outcomes, through tainted regulatory decisions, ozone, lead, soot, the California waiver, mercury. There have been an array of them.

And I think that in that context, it is very important that there be at least some effort to review what happened, to make sure that you know what was done wrong, so that A, you can put it to right, B, to the extent that it bears on the future, we can correct that, and C, so that nobody does this again. Because I think something very wrong was done to a very important piece of Government.

So for all those reasons, I would ask you for your comment on what process you consider to be appropriate, given that you are busy looking forward. You have environmental issues to protect. What process within EPA do you think would be the best one, we talked about this in my office, as you recall, for looking back, documenting what went on, and particularly in the context of the vacancy in the IG position, or the Acting IG, what are your thoughts about that?

Ms. JACKSON. Senator, when we spoke, you made a suggestion that I thought was very, very good, obviously. But also echoed one that I had been thinking. As part of our look at EPA, we see that the role of the inspector general, the idea of an audit function, and that has historically been played at EPA at least in part inside the agency by an independent inspector general, who has authority and is given the authority by the Administrator to the staff of, the cooperation of the staff at EPA. A good inspector general, an independent one, asks the tough questions to make sure he actually serves the Administrator well, make sure that the programs are functioning at EPA as they should, the money is being spent as it should, that it is independent, that it is truly protecting human health and the environment, that it is returning to its core mission, and that it is performing its core mission.

Senator WHITEHOUSE. Well, my strong advice continues to you to get a good IG, and task them to look back and catalog what happened and what effect it may still be having on the present.

I would also advise you to watch out for OMB. We have received repeated evidence that OMB has become sort of the political bully boy influencing agency decisionmaking in very often I think inappropriate ways. I have spoken to Peter Orszag about this, Cass Sunstein's appearance at OMB announces a promised reform of their agency review process. But I think that has also been used to corrupt the agency process and to insert political considerations behind closed doors. So I would urge you to keep an eye out for that.

The last question I have is, we have talked about the Clean Air Act, bearing on carbon dioxide. We have talked about the California waiver, which will bear on carbon dioxide. Rhode Island is one of the States, so it is also the Rhode Island waiver. And then of course we have the Warner-Lieberman bill from last year, and whatever iteration of it should re-emerge, preparing a cap and trade regime. How do you see those three elements fitting together, and what rapidly, if anything, do we need to be considering on this Committee to deal with climate change. How much can you go forward on your own with the Clean Air Act Authority and with reliance on the California waiver, and how much do we need to do here to support you with cap and trade authority?

Ms. JACKSON. Senator, much of the initial agenda for the EPA Administrator and for the EPA is now set by court decision. The

California waiver, I have already committed that we will, if I am confirmed, I will review forthwith, and the President-elect said as much during the campaign. In the Massachusetts v. EPA decision, the Supreme Court has ordered EPA to make a finding and EPA has yet to do it. When that finding happens, when EPA makes a decision on endangerment, let me put it that way, it will indeed trigger the beginnings of regulation of CO<sub>2</sub> for this Country. And that means an extraordinary amount of communication with this Committee, and interaction is going to be necessary. Because it will happen at the same time as this Committee is potentially, as you said, considering legislation to address same.

All that is happening in the wake of another court decision on CAIR, on the Clean Air Interstate Rule, that tells EPA to go back and remands the decision, holds it up for now so the State, the Country is not left with no air pollution regulation, but commands EPA to now go back and review and potentially propose new regulation or a different regulation. All those things together mean that there will be an extraordinary burst of activity, not just at EPA, but I would expect, potentially, from Congress. And I think there is tremendous opportunity in those imperatives to move forward together, to move forward so that we build on what each other are doing, rather than work at cross purposes.

And industry has said, many have said in industry that if they had the road map, they would prefer a clear road map. So to the extent we can, it serves them well, too. Because it gives them one set of criteria that they know they will be required to meet, rather than some piecemeal regs and then maybe law, and then more regs and law. So I think that there is tremendous opportunity there.

Senator WHITEHOUSE. Thank you, Ms. Jackson. Thank you, Madam Chair.

Senator BOXER. Thank you.

Before I call on Senator Cardin, I just want to correct the record on something you said about the waiver. You committed to review it. And you committed also that science would guide you and professionals would guide you at EPA, for which I am eternally grateful. You also said the President-elect committed to review the waiver. He didn't. He committed to sign the waiver. And he not only committed to sign the waiver, but he was a co-sponsor on our bill to grant the waiver. So I wanted to separate out what you said about him with what he actually said. I think it is important we remember, he said he would sign it and he was a co-sponsor of the bill to grant it. So I want to make sure that happened.

The other thing I would like to put in the record at this time, I just want to say before Senator Whitehouse leaves, in this new Committee structure, Senator Whitehouse can be very involved in vigorous oversight. So you will be talking a lot with him in the future.

We just got hot off the press the following. A Federal judge has ordered the Tennessee Valley Authority to clean up four coal-fired plants that he said were engulfing parts of North Carolina with air pollution emissions that fouled the region's health, economy and natural resources. The Attorney General of North Carolina announces how pleased he is with this.

The judge says, in this case, North Carolina has presented sufficient evidence that untreated air pollution from the three power plants in Eastern Tennessee unreasonably interferes with rights of North Carolina's citizens, he wrote in his statement. The judge ruled TVA must install and maintain pollution controls at the Widow Creek plant in Alabama. TVA's failure to speedily install readily available pollution control technology is not and has not been reasonable conduct under the circumstances. And this article goes on.

I just want to say, and I think you know this, Ms. Jackson, that if it hadn't been for the courts these last 8 years, I don't know how much more cancer there would have been, I don't know how many more sick kids with asthma there would have been. But the courts have acted as a check against EPA. However, there is so much more out there that you need to review. Those midnight regulations, those rollbacks after the last 8 years. I asked my staff how many rollbacks, and they said if you listed the rollbacks, they would go from probably one end of Dirksen all the way to the other.

So the courts have played an enormous and positive role in stopping some of the worst of it. I am sad to say to my colleague, Senator Carper, who will be overseeing TVA, that TVA is bemoaning this decision. I think those days are over. They need to stop bemoaning cleaning up the environment and work with us. I know under your leadership they are going to go that direction.

Senator Cardin, Senator Carper, Senator Merkley.

Senator CARDIN. Thank you very much, Madam Chairman. Let me just concur with your comments, particularly on the California waiver. I am another co-sponsor of that bill, and we look forward to science prevailing and the California waiver going forward, which Maryland is one of those States that have adopted the California position.

Ms. Jackson, I want to return to the Chesapeake Bay. I thank you for our conversations. Speaking on behalf of the 17 million people who live in the watershed, its importance to our Country, we need leadership. I know that you have indicated you planned to visit the Bay with me, and we will see first-hand the work that is being done.

The Federal partnership requires leadership, requires strategies based upon facts and science, not based upon any just trying to feel good, but really making the progress that we need. I want to give you a moment to reflect on that, and I hope that you will make a very strong commitment in regard to the Federal Government's partnership with the Bay.

Ms. JACKSON. Senator, as we discussed, I look forward to visiting the Bay with you. I believe that the Federal Government's partnership is important, not only because of the extraordinary treasure that is the Chesapeake Bay, and the extraordinary need to return it to health, to the ecosystem that it is and can be in all of its glory, but because it is such an important demonstration to the rest of the estuary programs in the rest of the Country of the power of EPA and States, because the States are certainly involved, to turn the tide, to reverse the trends in non-point source pollution that are affecting the Chesapeake Bay.

I am happy, if confirmed, to commit to raising the bar even further on the Federal Government's level of commitment to this extraordinary resource, and to doing something you referenced in your question, which is making sure that science, that EPA career employees who are working on it don't feel the need to hide the truth of what is working and not working, because they are worried about resources being taken away from them. We need to be able to have an honest dialog about where we haven't been able to see the improvements.

Senator CARDIN. I thank you for that. I agree with you completely.

I am going to mention two areas of specifics for the Bay. One is the nutrient problem. You have already mentioned the stormwater runoff issues, non-point pollution sources. Another causing nutrient is the wastewater treatment facilities and the need to improve that, and then we have the agricultural use. In all three of those areas, we need to concentrate on reducing the nutrient levels that are suffocating the Bay.

Again, I look forward to your strategies as it relates to that particular issue.

The second issue is mercury and nitrogen oxides that Senator Carper has been a strong leader on. Thirty percent of the problems in regard to nitrogen oxide comes from the air into the Bay. So it is not just dealing with water quality, it is also dealing with air quality as we try to develop the right strategy on improving the quality of the Chesapeake Bay.

Ms. JACKSON. Senator, I look forward, if confirmed, to working with you on those issues.

Senator CARDIN. Thank you.

Senator Boxer is correct in that the courts have been very helpful in balancing some of the outrageous conduct at the EPA during the last 8 years. But in a couple of cases, the court cases have been difficult and problems for the environment. President-elect Obama has said that he looks forward to signing legislation that will return the traditional role of the Clean Water Act. Recent decisions have, on the definition of water in the United States, dealing with isolated waters and headwater streams, have effectively eliminated about 500 cases that were pending before the EPA.

Can we have your assurance that you will be working with us to correct the Clean Water Act so you have the power you need to regulate the waters of our Country?

Ms. JACKSON. Senator Cardin, if confirmed, I will be happy to provide advice, counsel, information, whatever I can to this Committee through its Chair to make sure that the waters of our Country are adequately protected and enhanced.

Senator CARDIN. Thank you. I want to return just very quickly to the stormwater issue. The National Research Council, part of the National Academies of Science, released a report this past October finding that radical changes to the EPA's stormwater programs are necessary to reverse the degradation of our Nation's water resources. I just call that to your attention because I agree with you on your point of letting science control the decisionmaking here. The clear science is that we have to regulate runoff issues. And you have the opportunity to do that once you are confirmed



and head up EPA. I just urge you to be bold in looking at ways that we can deal nationally with the runoff issue and the damage it is causing to your environment.

I want to mention one other issue in the time that I have remaining, and that is lead and lead poisoning. Maryland has been one of the leading States in the Country in trying to develop proper strategies to deal with lead poisoning. The work in Baltimore, at our law school, and some of our medical facilities are the top in the Country.

I just really want to bring that to your attention. On residential property, you need to have an effective way to determine whether there is toxic lead dust, and needs again to use the best science information that is available in an objective sense, rather than just having a self-regulated process that many property owners would prefer to see, rather than having a more objective Federal policy as it relates to the lead poisoning. You know the impact it has on our children. It is preventable and it is widespread and it needs leadership. I ask for your commitment to find ways in which EPA can play a constructive role in reducing the number of children in our Country that have been exposed to lead.

Ms. JACKSON. Senator, if confirmed, I would certainly commit to that. I think that the fact that it is preventable makes it a tragedy, makes it an environmental issue and often an environmental justice issue. The President-elect has said that lead poisoning in children is something that would be addressed in his Administration. I would begin by reviewing current EPA regulations and looking toward other ways to address mitigation of this problem.

Senator CARDIN. Thank you very much. Thank you, Madam Chair.

Senator BOXER. Thank you so much, Senator.

Now, here is what we are going to do. We are going to go to—I apologize, Senator Merkley, this is what happens, but very quickly you will be moving up the rolls. We need you to stay here, you have a wonderful voice. So Senator Carper, Senator Voinovich, Senator Merkley.

Senator CARPER. Thanks very much.

Ms. Jackson, I understand you introduced your husband earlier. What is his name?

Ms. JACKSON. His name is Kenneth.

Senator CARPER. I just want to say, take a good look at your wife. When you bring her home from the inaugural ball, take a real good look at her. That is the last time you will see her until Christmas.

[Laughter.]

Senator CARPER. Make sure your kids have plenty of pictures of her. Well, they will see her on TV.

[Laughter.]

Senator CARPER. I just want to say, we understand that these are partnerships and that there is a great willingness to share your wife and your children's mom with our Country. We are grateful for that. We promise to make sure she gets home for at least Easter, and maybe even a birthday or two along the line.

Ms. Jackson, you have been asked by Senator Cardin to come and visit the Chesapeake Bay with him. I think you have been invited by Senator Baucus to come to Libby, Montana. Others have

probably invited you to come to their States as well. Last time, when I was Governor, Carol Browner came to Delaware, brought her son, came on a wonderful summer day. The idea was to come to Southern Delaware and then go to the beach. It rained all day.

[Laughter.]

Senator CARPER. You have great beaches in New Jersey, but if you make your way to our State, we will be sure to provide better weather. We hope you will have the opportunity to come and see us, too.

Senator Boxer spoke earlier about the kind of hazardous air problems that are facing our schools, too many of our schools, and staff held up a picture. In that picture, as I recall, we could see several school buses. And one of the major contributors to air pollution in and around schools comes from those school buses that the kids ride to school in, they are present on the grounds, and they ride home in those at the end of the day.

Senator Voinovich has been a great leader on this front, as you may know, along with Senator Clinton, joined by Senator Inhofe and others on this Committee. We have the opportunity to do something about it, and some of us have actually called on the incoming Administration as we put together a recovery package. We are looking at ways to provide employment opportunities for people in ways that enhance our competitiveness as a Nation, cleanup our air and meet other public purposes.

The idea that we can spend \$1 to install diesel emission reductions equipment, made in America by Corning, in school buses, we not only provide employment opportunities for the folks who do the installation in the school buses and trucks, boats, trains and so forth, we also provide employment opportunities for people at Corning or other places where they are actually manufacturing, creating the technology.

And for every \$1 that we invest, we get a \$13 public health benefit. Thirteen for one. I don't know of any other investment that we voted on or made in this Committee where we get a better public health investment for the dollar. So I would just ask, just know that we submitted it to the Administration the transition team. We think this is a good way to stimulate the economy and have a number of good public purposes in addition. So I just lay that at your feet.

On climate, I was pleased to see in your written testimony that you listed reducing greenhouse gas emissions and reducing other pollutants as to the incoming President's environmental initiatives. I would just ask, do you expect the Administration will be sending us a climate change bill to the Hill, and if so, will other pollutants from coal plants likely be included? How do you expect transportation to be included? So that is like three questions.

Ms. JACKSON. Thank you, Senator. The EPA, I can speak first for EPA and then maybe more broadly. As I mentioned in an earlier answer, the remand of the CAIR Rules back to EPA demand a look at NO<sub>x</sub> and SO<sub>x</sub>. The mercury decision demands a look at mercury rulemaking by the EPA. And clearly, the President-elect has, I believe, demonstrated a commitment to energy and climate change issues that will involve me and Nancy Sutley and Carol Browner and across Government an effort to coordinate those issues.

As far as the actual formulation of policy and how, what will be controlled legislatively versus regulation, I think that is part of a dialog that we certainly can and must have with Congress and with others. And I look forward to that. I think that there is great opportunity in that dialog and what I would say is, if confirmed as Administrator, I would certainly not forget the other pollutants as we look toward climate change and its impacts on our economy. Whether it is diesel air pollution from buses, and you took away my chance to thank Senator Voinovich for that when his time comes. But thank you for your work on DERA and on diesel emissions.

I am a mother of a son with asthma. My youngest son spent his first Christmas in the hospital with asthma. So I can only echo what you say about the incredible benefits for the amount of money. But many of the other pollutants as well, there is still low-hanging fruit, there is still work that has almost comparable health benefits if we are smart in how we regulate them and potentially legislative controls for them.

So I look forward to moving those issues forward in a thoughtful but aggressive way.

Senator CARPER. Good, thank you. Going back to diesel emissions just for a moment, the good thing about diesel engines is they last a long time. The bad things about diesel engines is they last a long time. There are a bunch of them out there, about 10 million, more than 10 million I am told. And we have spent, I think in the last year, about \$50 million to pass legislation, and in these settlements, to allow States to use some of the settlement money for diesel emissions reductions. But it is very modest compared to the great need that is out there.

You mentioned the CAIR Rule, let me come back to that just for a moment. In light of the mercury cases and the CAIR Rule and other attempts by the current Administration, I believe, to delay clean air, what would you say are your top two Clean Air priorities for 2009, if confirmed? I am not asking your top 10. What might be your top two Clean Air priorities for 2009? And really, how can we help? We want to help.

Ms. JACKSON. Thank you. I would say, again, that the first thing is to, in keeping with restoring EPA's role as protector of human health and the environment, and meeting its statutory mandates to protect human health and the environment, I think it is incumbent upon the next EPA Administrator to take a hard look at the regulations that are out there. So that is going to encompass mercury and the CAIR Rule. And that is going to encompass our current regulatory web. It is also going to bring in climate change, because of the Massachusetts v. EPA Supreme Court question, which begs the question of where we regulate there.

So not to broaden it too much, but I think you can't pick one of those issues and say, well, I will only work on this. Because I think what must be done in order to really restore the American public's faith in EPA is for EPA to squarely look at the mandates that are before it and step up to the regulatory plate and commit early on, as I do now if confirmed, to address those regulations and to make them sound, to base them on science and to do it in a way that will withstand legal challenge. Because certainly the constant sort of

back and forth of the legal challenge doesn't help anybody in terms of actually achieving cleaner air. It simply prolongs it.

Senator CARPER. All right. Thank you, Madam Chair.

Senator BOXER. On the mercury, Senator Carper has been an extraordinary leader. My understanding is that EPA lost a case at the District Court level, correct me if I am wrong on this, Circuit Court, D.C. Court of Appeals. They now are fighting it. They were told they had to go back and write a new rule. But they are fighting that. I hope, and you don't need to answer this now, that you are going to look back at this and say, why are we fighting it? Because that is exactly what the EPA, they fight every step of the way against what is doing right. I hope you have the best advisors there that will tell you, don't pursue some of these legal cases. They cost a fortune, and they are hurting people's health.

We are going to go to Senators Voinovich, Merkley, Klobuchar.

Senator VOINOVICH. Thank you.

First of all, I want to thank you for the wonderful visit that we had in the office. We got into a lot of management things and I want to let the Chairman know that I have every confidence that Ms. Jackson has the management capabilities and the wisdom to do what is necessary to run a good agency, which is No. 1. You get the right people with the right knowledge and skills at the right place at the right time, and I urged her to make sure to let the Office of Budget and Management know that she has to have the wherewithal in terms of the people who work there to get her job done.

Senator BOXER. Absolutely.

Senator VOINOVICH. We talked about a lot of things, the DERA thing, by the way, that was a team of Voinovich-Carper, Carper-Voinovich. We have been working on a lot of stuff for a long time. I hope to continue to do so. They got that done, and it is a good program. And other programs that you are going to have to look at in terms of the allocation of your budget.

But I think it is time, and Madam Chairman, you are going to be hearing more from me on this, because I have 2 years, and so I want to try and make sure that I get in a good 2 years. The President has a wonderful idea of having this energy-climate change czar in Carol Browner, whom I have gotten to know quite well. I knew her when I was Governor and then when I became Senator.

But one of the things that I think would be wonderful, Madam Chairman, is if we could get these folks together in a room, not necessarily a hearing, but just get together and have them kind of outline, what is the vision? What are the things that they want to see done and the issue then is, where do we put our time on this Committee to get things done.

This is my tenth year. We haven't done very much. The reason is because we have not been able to harmonize our environment, our energy, our economy, and now another major thing that is on the horizon that we are going to hear a whole lot more about, is our national security. And then we now have a new thing, and that is, our economy is in terrible shape. So any time we start doing things, say, like climate change, I fought that, I told you I fought that bill and we were trying to come back with another bill. You have to consider what impact it is going to have on these people.

In my State, 100 communities are being asked to take care of their combined storm overflow problem. And they are talking about rates that are 10 percent more each year. They are out of work. In other words, we are in an interesting environment today, and one that we hopefully will get out of. But the fact is, we need to do more planning than ever before, I think, if we are going to get the job done.

I want to do something about climate change. I think there is an urgency in climate change. I think it has foreign policy implications. At the same time, how do you put it together in a way that you don't kill the economy of our Country?

So Madam Chairman, that is the kind of thing we need input for. Why don't you just follow up with what Senator Carper asked, and that is, with a prioritization of what are the things that you think, at least at this stage, that you need to focus in on real fast? Because you have the CAIR Rule that is out, you have the issue of the court case that said that now you can regulate greenhouse gases. How does that fit in with our climate change legislation that we have been working on?

Ms. JACKSON. Thank you.

First, I used his answer time to thank him, so now I have to use your answer time to thank Senator Carper for his extraordinary work on DERA, and on air pollution as well. So now we are even. And to answer your question and to continue the prioritization, Senator Carper asked about air. I am going to broaden it, and be one of those bosses that, if I am confirmed, maybe EPA staff will say, oh, my. But regulatory, EPA is a regulatory agency, its stock and trade, and it should be judged by the caliber of its rules. And it has many, many rules. So one of the other things I would look forward to doing is to, looking at the state of rulemaking, not just in the air program, but in the water program where there are many questions, on community right to know, where there have been some questions, and asking ourselves two simple questions: are they legal, are they sustainable and are they based on science.

And challenging the staff, the professional staff that are there, to work on those issues. We certainly cannot change every rule, nor should we. There are good rules on the books as well. But I think part and parcel of restoring the agency's stature is for the agency to be able to sit up tall and say, our rulemaking stands on its face, and it stands up in court.

So I would look forward to doing that. I think that there are clearly, resources dictate that you cannot do everything at once. But if we look at the rules that are before us legally on the air side, we have some mandates on the water side. But we look as a whole at the agency and how we do our regulatory process, I think that the agency will be better and stronger for it.

Senator VOINOVICH. Well, in the process of the regulation, I think it has to be also looked at in terms of just what the reality is of the regulation. One of my pet peeves for years is we are in Region 5. I have heard business after business say that, I would rather be in Region 3 or I would rather be in some other region, because they implement the rules differently in those regions than they do in Region 5. In other words, where is the consistency? It is just a management thing. But are they consistent in terms of the

training, in terms of what are you doing in one area and are you being consistent there? It is another issue that I think you should look at.

And then look at some of the other things that are around that impact on your well-being. One of the jurisdictions we have is the Nuclear Regulatory Commission. And how does nuclear power impact on greenhouse emissions? It may not be in EPA's ball game, but it is. That is why I am saying, if Carol would get everybody together and say, hey, in this climate legislation we had, it requires or anticipates, EPA says, 150 new nuclear power plants being built by 2050. Well, nuclear power contributes 70 percent of the emissions-free energy in this Country. And it has to be part of all of the things that we are doing.

I think the problem here, to a degree, is that we have too many silos. I was listening to Jack Lew, who is going to go over to the Department of State, talk about the fact that you have to look at the big picture, how does all of this stuff fit together? And as I told you in my office, and I will finish real quick, I was the mayor of the city of Cleveland. We had 20 percent unemployment. The Federal Government was helping us with an emergency jobs bill, so that we could have a public works program, on the one hand, then I have the EPA in there working, shutting places down. And I thought to myself, do these people ever talk to each other? And I know you have a regulatory job.

But there seems to me to be a bigger picture here that we ought to be looking at if we are going to make the progress that we would like to see made here in this Country, for our environment, for our energy, for our economy and our national defense.

Ms. JACKSON. Thank you, Senator. I will remember environment, economy, energy and security. I will take that back with me, thank you.

Senator BOXER. I think Senator Voinovich makes a good point. Of course, for me, it is not as complicated as it sounds, because you have a clear mission to protect the health of the people. That is what it is. So for me, you are a professional, you have scientists. For me, that is it.

And what I am happy about is that when Senators on both sides of the aisle ask you about some of the issues they really care deeply about, which fit into that, you have said yes. So already, I think, Senator Voinovich, we have a commitment for Senator Inhofe to get help on Tar Creek, for Senator Baucus to get help. When I say, they, the people in Libby, Montana, the toxic coal ash, the toxic air in the schools, the waiver review, clean water, the water runoff problem, particularly in places like Chesapeake, diesel engine cleanup, working with us on that. And from Senator Whitehouse, a review of these advisory boards that are laden with folks that some believe have a special interest.

Senator VOINOVICH. Madam Chairman?

Senator BOXER. If I could just finish, and then I will call on you.

For me, the last thing I want to do is dictate what you are supposed to do. I like the idea of a conversation and we will do briefings. We will, which are not hearings, they are briefings, conversations. I love that idea. Because I think bringing Carol Browner in, bringing you in, bringing Nancy Sutley in, you all have your re-

sponsibilities statutorily into the law. I think it would be a very good thing. Because President-elect Obama has, I would say, re-ordered the system here by bringing in a Carol Browner, who used to be the head of EPA, who understands it, and by I think elevating, and if I just might say it, with the people he has chosen, elevating in importance the environment.

I think it would be good to have that conversation, so I would like to commit, Senator Voinovich, we will do a briefing, and we will have the top level Obama people there. Because I think this give and take that we have today shouldn't just be a one-time only thing.

Senator VOINOVICH. Right. But the point I am making is it is like the Great Lakes. We finally have a comprehensive plan for restoration of the Great Lakes. But Madam Chairman, Army Corps of Engineers, Fish and Wildlife, NOAA, Department of State, Department of Transportation, USDA, all of these agencies have something to do with restoring the Great Lakes. It seems to me that when we are doing our work, we ought to think about, how do some of these other things impact on what we are trying to accomplish, and maybe get those agencies to maybe work better together to move the agenda forward and better utilize their dollars.

Senator BOXER. Absolutely. I think we have to do that, otherwise we have paralysis. I think this, we don't have, we can bring the Corps in here, we have jurisdiction, that is a good thing. So I think we do face these uphill climbs when we have something ready to go. And I stand ready to help you on cutting through some of that, on the Great Lakes in particular. Let's get it done, let's make a commitment to get it done.

Senator VOINOVICH. Thank you.

Senator BOXER. So we will.

OK, and Senator Merkley, the most patient human being on the Committee today, followed by Senator Klobuchar.

Senator MERKLEY. Thank you very much, Madam Chair.

Ms. JACKSON, I wanted to get your understanding of how serious the buildup of CO<sub>2</sub> is in the atmosphere and what happens if we continue at the current pace of increased CO<sub>2</sub> 50 years from now.

Ms. JACKSON. Senator, we know that man-made emissions are contributing to climate change on our globe. And we know that the conditions are worsening, that time is not our friend, it is our enemy in this matter. CO<sub>2</sub> lasts in our atmosphere for decades, sometimes longer.

There is a need to act, there is a need to act, I believe, for our Country with science in front of us. Obviously with the law as our guide. And there is a need to do it not only for our Country but in order to show the leadership that the world has been waiting for on that issue. There are technologies that America can help to develop and bring to operation. There are renewable energy mandates in some States, but there is an opportunity for an incredible investment in renewables that makes sense, and energy efficiency.

So in my mind, the peril of inaction is different for different areas of the Country and quite different for different areas of the world. Science tells us that those areas of the world that have the least ability to defend themselves and the least money will be hard-

est hit by the ravages of climate change. A State like mine that is a coastal State, and yours as well, could be particularly hard hit.

Senator MERKLEY. I will just share with you a couple of numbers that I have carried with me in thinking about this. One is that everything we are seeing change in the world is from a one degree centigrade change in temperature, just a one degree change. It is my understanding that the best scientific consensus is that by the time a small child grows up to be my age, and I am 52, so 50 years from now, that if we continue on the current course of carbon buildup and other global warming gases, the temperature of the planet could well go up more than five degrees, which is more than catching a slight fever. It is a very, very catastrophic state. And 50 years is such a brief period. This is why these numbers helped me understand why this is so important.

I just picture that small child, and that we have one lifetime, basically to address this.

An issue in Oregon and in our ports and the Columbia River is invasive species from ballast water. In October 2008, there was a conversation in which the Oregon ballast water manager said, the Feds have delayed time and time again coming up with proposals. This was specifically related to trying to diminish invasive species. And we have something like 30 species in the lower Columbia River that have come from ballast water, several number of species in the Coos Bay.

Can we anticipate a collaborative approach in tackling this problem?

Ms. JACKSON. Thank you, Senator. If I am confirmed, I would bring together the scientists and regulators from EPA's water program. It is, indeed, invasive species are a huge problem in your bay and also in the Great Lakes. I have heard from several people about the impact on shipping with respect to these invasives. And I would be happy to sit with you and work with you cooperatively and re-look at EPA's current regulatory posture with respect to ballast water and its impact with respect to invasive species.

Senator MERKLEY. Thank you. That would be most appreciated.

We have an area north of Klamath Falls called Northridge Estates, 750 acres that was affected by 1,500 tons of asbestos. And in 2007, just over a year ago, the EPA outreach coordinator, Judy Smith, said the emergency cleanup "was a Band-Aid when surgery was needed." Can we anticipate more than Band-Aids in assisting us in taking on the major toxic pollution sites like the Northridge Estates?

Ms. JACKSON. Yes, Senator, if I am confirmed, you can. I don't know the particulars of that site. I certainly think that if an EPA employee says we are just beginning, clearly she would know that. I would need to look into it, but I would be happy to do that.

Senator MERKLEY. Thank you. That would be very helpful.

Turning to tailpipe emissions, in December 2007, EPA rejected the California request. This was certainly of concern to Oregon, because we had tied ourselves, like so many other States, to California. It was specifically to cut greenhouse gases and tailpipe emissions by 30 percent by 2016. It is my understanding that the EPA staff concluded that this waiver was appropriate under the



law, but it was reversed at the highest levels of EPA for political purposes.

Can we count on you to work hard with your staff to implement the law as it is written, and in this issue in particular, can we get your assistance in supporting the California tailpipe standards?

Ms. JACKSON. Senator, I will commit again, recommit that I will review the waiver decision if I am confirmed, very, very aggressively, very soon after confirmation and taking the job. And I will let science be the guide in making the determination, and I will let the rule of law, and the law, I think not only EPA scientists but EPA lawyers, have looked at the issue and had a history of looking at waiver requests from California.

So while I wouldn't prejudge it, I would commit to you that those are the two sources I would look at in making a determination.

Senator MERKLEY. Thank you very much.

There is one more area I just want to draw to your attention, and that is the Hanford Nuclear Reservation on the Columbia River. It has a growing radioactive plume affecting the river. We have had a tremendously difficult time getting the funding necessary to get ancient nuclear radioactive products that were part of that industry from numerous nuclear plants that were there, out of single tanks, into double shells, out of double shells into permanent storage, getting the plant built that will put these materials into glass noodles for a long time, basically isolate them safely for the future. We really would appreciate an aggressive and bold help on Hanford.

Ms. JACKSON. Senator, if confirmed, I am happy to re-look at and redouble our efforts at cleanup. For so many sites, it comes down to a question of resources, money and authority. I think both are necessary to ensure adequate cleanup of sites.

Senator MERKLEY. Thank you very much.

Senator BOXER. Senator Merkley, it was worth the wait to hear you talk about the California waiver. When you say science and the rule of law, it sounds funny that it would be such music to our ears. Because for 8 years, a lot of us don't believe there was science or the rule of law involved in these decisions at EPA.

Senator KLOBUCHAR.

Senator KLOBUCHAR. Thank you very much, Madam Chairman, and thank you, Ms. Jackson. I know it has been a long morning. You must be getting hungry. So I will try to keep this short.

I started out my opening statement by talking about just my frustration with what the Chairwoman just talked about, this lack of transparency and this literally hiding of evidence, which as a former prosecutor, I just couldn't believe. One of my worst memories of this time period was sitting out there secretly reading that endangerment finding. I know that Senator Whitehouse asked you some questions along this line, but could you talk a little about, well, one just specifically, can you make that endangerment finding public, so everyone can see it? Maybe you will be writing your own, I don't know.

But then second, just ideas to restore not just the faith of the public in the agency, but more transparency?

Ms. JACKSON. Senator, the finding on endangerment has not been made. I would expect, I would certainly need to consult with

lawyers, because I am not one. But I would expect in doing that, in fulfilling a commitment to move toward making that finding, we would be reviewing the background and information that has been prepared, and then making it public as part of the record. I would certainly want to check on that. But that is generally the way those things are done.

As far as transparency, the President-elect has made it clear that transparency, he has an unprecedented level of commitment to transparency in Government, and to opening up the doors of Government and Government decisionmaking. So if I am confirmed, I would certainly be proud to uphold that commitment on the President-elect's part and to make sure that it is translated at EPA. I am certain he will be doing things at the White House level. But I would certainly, as the EPA Administrator, then make sure that the staff understand the commitment to transparency as well, so that it doesn't just guide my actions, but that it guides their action as well. Because they also have an awesome responsibility as employees of the agency.

Senator KLOBUCHAR. That is why I appreciate your management experience that some of the other Senators were referring to. Because I think you understand it is not just one person, it is changing the culture of an agency, where some people probably wanted to come out with things and they haven't been able to.

On the climate change legislation that we did last year, specifically the first title was the greenhouse gas registry that I was pushing for. I think we talked about that yesterday when you and I talked. The EPA has a rulemaking going on, there was supposed to be a rule issued. This is this notion that we need a carbon counter, like a calorie counter, that it shouldn't be that hard, that we are never going to be able to enact cap and trade if we don't have some way to measure what the carbon emissions are. And we were blocked with this on the floor, States have, I think 30 some States have had to come together to form their own registry, which I just think is sort of a pathetic example of how the Federal Government is lagging behind, when you have the majority of the States having to form their own.

Could you talk about your commitment to getting that started immediately, so we can get that in place as we move forward on climate change?

Ms. JACKSON. EPA, Senator, has already received funding to begin the process of developing a registry. It simply hasn't gotten the rules out the door. And the time lag is not good. Because we don't know where we are. So it is very hard to track where we are going. Many industries have already started to do it for themselves. Business already wants to know what they are emitting so they can know what impact carbon regulation is going to have on them.

So my commitment, if confirmed, would be to jump start that rulemaking. Because it is certainly an important step, not the only one, but an important step to baselining and making sure that we know where we are going with respect to the science of CO<sub>2</sub>.

Senator KLOBUCHAR. Thank you.

Also in my opening I talked a lot about this need to start viewing the EPA work also positively in terms of how we can work hand in hand with job creation in the energy area through climate

change policy and other things. One example of that that I want to call to your attention, biofuels, I still believe are at their infancy, whether we move toward LG or prairie grass and switch grass. There is a guy, the Chairwoman has heard me tell this story before, in southern Minnesota who brings out his laptop all the time and shows me how he can solve our entire dependency on foreign oil by growing switch grass on highway medians. And I always think, as my husband and I drive down the Minnesota highways, how dangerous it would be to harvest it.

[Laughter.]

Senator KLOBUCHAR. But there are plans out there and I think people have felt stymied in their advancement. With the biofuels, as I say, it is at its infancy, it clearly can move toward more cellulosic. Our State is very interested in doing that.

But right now, industry is rather fragile. I for one believe we shouldn't be pulling the rug out from under it. And one of the things that Senator Thune and I and others have been pushing for and the EPA is considering this, there is a rulemaking going on with blends. I think we have come to be convinced that the answer may not just be E85, it may be just lower level blends in all of our fuel.

There is a rulemaking going on for E15 and E20, I think, which will take quite a while. One of the things that we have asked for is whether the EPA could look at, as you look at making rules easier to create more jobs, is a short-term increase in the level of the ethanol blends, say to E11 or E12. It sounds small, but it could actually be very helpful to the biofuels.

So if you could look at this, I would really appreciate that. It is something we have been meeting with the auto makers on, and it doesn't appear, studies from the University of Minnesota have shown that a slight increase wouldn't do anything to the engine. But again, this kind of common sense thought about jobs and environmental regulation I think would be helpful.

I don't know if you want to comment on the biofuels at all.

Ms. JACKSON. Thank you, Senator. I like the phrasing of short-term, and then there is clearly, when there is short-term, there is also long-term. So I am happy, if confirmed, to sit with you and explore the issue of short-term changes in ethanol or biofuels and what that means. But over the longer term, EPA has another responsibility, though, and that is to look at the life cycle of fuels in their development, and the life cycle analysis thereof. I think that is an important role, and one that EPA scientists can add a lot to the discussion on.

So in addition to the short-term questions, I hope we can work together, if I am confirmed, to look at the longer term issues that are before EPA, and the impacts, however indirect, that you say common sense, I think there will need to be a look at indirect impacts. But one that is guided by what we can actually measure and what we know and what the science says we can determine.

Senator KLOBUCHAR. Thank you. Again, I just want to reiterate, we have had a big bipartisan effort in our State on renewable fuels and alternative energy. And as a result, we have huge political support for it across the lines. We have the most aggressive renewable electricity standard in the Country, 25 percent by 2025, with

Xcel agreeing to 30 percent. We have the biofuels, we are on the front end of that. And the people in our rural areas have seen the positives of this, and that is why when you talk about a green economy to them, it is nothing foreign. They know that the growing area in our State right now where they are actually looking for employees is the Fargo-Moorhead area in large part because of the wind turbine industry up there.

So again, I think the more we can push this, we not only will get political support for climate change, but we will also add jobs to our economy. And you have a big job, but I know you can do it. Thank you very much.

Senator BOXER. Thank you, Senator.

So I want to say what the rules are. Senator Udall is back for his first round of questions, and I have gotten clearance from the minority side that if, that people have 10 minutes to come back if they want to do a second round. I know Senator Carper and I are going to do a second round. So if they are not here by 25 after-ish, around that time, then no second round. We will be completing this and then we will have Nancy Sutley come forward. Is that all right? Unanimous consent request to go that way.

OK. So Senator Udall, you are recognized for 7 minutes.

Senator UDALL. Thank you, Madam Chair. And this is, I think you have covered a lot of ground, Ms. Jackson, no doubt about it. I haven't been here the entire time, but I have been in and out of my office and seen some of it, so I am impressed with the breadth of your knowledge.

One of the things that you and I talked about was uranium mining, and uranium mining waste on the Navajo Reservation and on the Colorado Plateau. It is a real tragedy and disaster out there. The Chair may be interested, the L.A. Times, within the last year did a four- or five-part series on what had happened. Henry Waxman did hearings over in the House. And growing out of those hearings, because there was a great deal of concern as to the waste that was there and kids playing on the waste and the problems that communities were having and that the uranium tailings and mining waste wasn't being cleaned up.

So five Federal agencies and the Navajo Nation got together and started working on a plan to try to move forward aggressively cleaning up. And I know that President-elect Obama is going to make a priority, I think, out of cleaning up hazardous waste sites. I am sure that is one of the reasons he picked you, because you have a real expertise.

And these particular waste sites I am talking about on the Navajo Reservation really involve issue environmental justice and minority communities. The Navajo Reservation has an unemployment rate of about 50 percent, and has had for a long time. So there are serious problems out there. I noticed that Senator Carper and Senator Cardin and others were talking about you visiting places. This is a place that I think that coming out West, and there are a lot of things to see, I might propose to you at some point to come out and see this, because I think you would really be moved to get something done here for the, it is the largest land mass and largest Indian tribe in the Nation.

So my question is one, have you been apprised of this situation, do you know about EPA's involvement in this project to move forward? And under your direction, will EPA embrace this initiative and lead in collaboration with the Navajo Nation and the Federal agencies to clean up this tragedy and disaster that is there?

Ms. JACKSON. Senator, I am certainly aware of it. You made me aware of it, and then I did a little bit of homework, because I knew it was coming. And it certainly is, the scope of mining sites, but this one in particular is such that a partnership is exactly what is needed. The good news here is that the parties involved recognize the need to double their efforts and triple and quadruple them by getting together.

I would be happy, if confirmed, to first visit, to look at the situation, but to try to find those ways and those areas where EPA can move to lead and to be aggressive in making sure that the partnership is not the end of the story, but the very beginning of the story. Certainly the scope of the problem is such that progress will need to be incremental and over long periods of time. But I would look forward to working with you on that.

Senator UDALL. Thank you very much.

We very much appreciate that cooperation. I think the Navajo Nation and its leaders will be very heartened to hear about your testimony today. And one of the things I have always thought about the EPA is that you are in the position, knowing and understanding and being in contact with all these hazardous waste situations, to be able to make recommendations to us. So I hope you will be very aggressive about telling us where you think there are the holes, the loopholes in the law that need to be filled.

The Chairwoman had a fantastic set of hearings here on coal ash and coal, which you may have been briefed on and followed. This once again is a situation where you have industry and Government accumulating large amounts of waste and really, in many cases, not handling it responsibly and polluting groundwater. You are really in a position to tell us where to plug these holes. And we are going to be very aggressive on our side to research that and I think work with you in a collaborative way on this.

So I very much appreciate your testimony today and your commitment to the public health and human health and the environment. I think it is great that President-elect Obama is proceeding and has put your nomination forward, a career person who has worked in this area. I have always thought the EPA is a very complicated agency, it has so much science to it. With your experience there and your experience in New Jersey, I think you bring the kind of experience that we need in that job.

So thank you for your testimony today. I may or may not participate in a second round.

Senator Carper, I think he was kidding you. I noticed there was a little shock about your husband not seeing you. I think he was kidding you about how long you were going to be away. I want you to make sure you spend time with those kids, because I have found that the biggest advocates are the young people. They are interacting with you, mom, you are in charge of this. And they are going to be reminding you.

So I hope she has some time to spend with her husband and her children. Thank you very much.

Senator CARPER [presiding]. Before Senator Udall leaves, let me just say, I mentioned we would try to have her home at least by Easter. I think Valentine's Day is probably negotiable. We will work on that, too.

Listening to all these places people want you to come and visit, I don't know if you get to keep your frequent flyer miles, but I hope that is part of the deal.

Ms. JACKSON. I don't think I do.

Senator CARPER. I want to go back, I want to talk a little bit more on mercury, but also before I do that, as one who comes from a downwind State, as we are in Delaware, let me just ask, do you believe the CAIR Rule, which has been knocked down and then really sort of reinstated for a while, but do you believe the CAIR Rule really goes far enough to help States meet our ambient air quality standards?

Ms. JACKSON. New Jersey was on record when I was commissioner as believing that the CAIR Rule, that more could be done under the auspices of the CAIR Rule to address our upwind contamination. The models we had working through the OTC and the scientists there showed that several States would still have attainment problems and that CAIR, stronger regulation could help.

That said, I would certainly not presume, even if confirmed, to know, to be the expert on the regulation. What I would like to do is turn back and use the opportunity given to us by the court to look at that rule and to determine whether or not there is additional strengthening that could be done on it.

Again, I think that can be done with an eye toward the extraordinary benefit that would accrue from giving emitters, especially utilities, a clear understanding of what the game plan will be, what the requirement will be upon them. So it is one of the reasons that I believe that re-looking at that rule early on is so important.

Senator CARPER. When you were good enough to visit with me this past week, one of the things we talked about was with the CAIR Rule, is there a need for some further regulatory fix, is there a possibility of some legislative fix, could it be a combination of both. Any thoughts in that regard for us?

Ms. JACKSON. Yes, Senator. What I said probably needs to stand, which is, we would want to make sure in dealing with the science staff and the regulators that any regulation would be strong enough to withhold any legal challenge. I would like to return to the day when EPA's record of putting out rules and having them withstand is quite strong. That means that we would consult with the agencies' attorneys as well.

I don't know right now whether there might be additional statutory authority needed. But that is not to say that it wouldn't potentially be helpful.

Senator CARPER. All right. One last thing I want to go back to. I want to follow up on the mercury rule discussion that we had a bit earlier. As I think you know, mercury reductions from power plants, especially, is a priority for me. You were obviously a leader in mercury reductions in New Jersey.

Could you just tell us briefly what you all put in place there with respect to mercury?

Ms. JACKSON. Well, you know, the case on mercury in New Jersey v. EPA, basically the courts found that the regulatory scheme that EPA had put forward in its rule really didn't comport with the requirements of the Clean Air Act. So that is more about rule of law than it is about science. That said, mercury is an extraordinarily important contaminant, not just because of the air emissions, but the fact that it deposits and that it can bioaccumulate and you can have localized hot spots of mercury.

And so I think in fashioning and beginning to propose a regulatory scheme and to replace the current one that the court has mandated EPA do, I think those considerations need to be kept in mind, that there needs to be effective treatment or removal of mercury from air emissions, and that local impacts, potential for localized impacts and then the bioaccumulation up the food chain and all the way up to human health needs to be looked at as well.

Senator CARPER. I hope that EPA drops the mercury rule case, and does not appeal it further. Have you had a chance to think back on this with respect to going back to the D.C. District Court?

Ms. JACKSON. Well, if I am confirmed, I am going to talk to the agency lawyers, and we are going to do that in the context of looking at what the decision says. I have already consulted with the agency's ethics office to make sure that, since that case was captioned New Jersey v. EPA, I am able to be involved there. And they have indicated that they have reviewed it and they don't have a problem with it.

So I would welcome the opportunity to embrace it and to look at the case on its legal merits, but to do it with an eye toward what makes sense from a regulatory perspective as well.

Senator CARPER. All right. Well, while we wait for Chairman Boxer to return and ask one last series of questions, is there anything that you had hoped would be asked today that was not asked?

[Laughter.]

Senator CARPER. It is not often that we give a witness this kind of opportunity. So you might just want to pull out your bat and take a good swing at it.

Ms. JACKSON. Do I have a clock, or do you just want me to go on forever?

I am hungry, so I will only say that if confirmed, I will continue to do that which I have always prided myself on, which is to, as commissioner, I am proud of my record there. We tackled some pretty tough problems. I would never claim that we were perfect or we had a perfect record, but we made progress. I believe that New Jersey's environment is better off for my tenure there. And that is, that makes me very, very proud.

I want to be able, if confirmed, to say that as well about my tenure at EPA, that the Country's environment is better off for my having been there. I will take that responsibility extraordinarily seriously. I will hold my record up in New Jersey with pride. I know that there have been some who, in my mind, have been unfair about the characterization of it. Again, I don't think it was perfect. But I do want people to know, as I sit here and ask for confirma-

tion, that I would take very seriously the opportunity to protect human health and the environment for the people of this Country.

Senator CARPER. Great. I would say in closing, again, our thanks to you for your willingness to serve. And to your husband, Mr. Jackson. A number of years ago, when former President Bush nominated Elizabeth Dole to serve in his cabinet, she was joined at the witness stand at her confirmation hearing by her husband, then Senator Robert Dole. And as he introduced his wife, Elizabeth, he said to his colleagues, he said these words, "I regret that I have but one wife to give for my Country." In that spirit, I yield to Senator Boxer.

[Laughter.]

Ms. JACKSON. One wife is enough, Senator.

Senator BOXER [presiding]. Yes, we would like to keep it that way. Speaking as someone who has been married for—I have lost track—48 years.

Ms. JACKSON. Congratulations.

Senator BOXER. Thank you.

I have for my second round, I will call it the lightning round—

[Laughter.]

Senator BOXER [continuing]. A number of questions which I think for the most part you could say yes or no to, unless you want to elaborate. I want to get these things on the record.

The first one is about perchlorate. Perchlorate is used to make rocket fuel. When it gets into drinking water, this toxic chemical can interfere with the thyroid and affect hormone systems, which control the way the body develops. Infants and pregnant women are especially vulnerable to perchlorate. It has contaminated drinking water supplies across the Country. California, my State, has 290 water sources with at least 4 parts per billion of perchlorate.

The GAO found in 2005 that nearly 400 sites in 35 States had perchlorate. In 2006, the CDC found widespread human exposure to perchlorate in the U.S. And they found that many women who were exposed to perchlorate in drinking water had significant changes in thyroid hormone levels.

A 2008 FDA study found perchlorate in 74 percent of all foods tested, including baby food. Yet, EPA recently refused to regulate perchlorate. We had quite a to-do over here in that hearing. And they won't regulate it in drinking water, and they sent the issue back to the National Academy of Sciences.

Now, again, delay, delay, delay. We have had years of it and we need action.

Do you commit to us to immediately review this failure to establish a drinking water standard for perchlorate and act to address the threat to pregnant women and children caused by this dangerous toxin?

Ms. JACKSON. Yes, Madam Chair.

Senator BOXER. Thank you.

Ms. Jackson, my staff has prepared a report on the tools available under the Clean Air Act to immediately reduce global warming pollution. One of the things that people don't seem to know is without passing any more legislation, under the Clean Air Act, we can begin now. I will provide that report to you on steps you could take. By the way, we got this from a lot of whistleblowers within



EPA who just couldn't speak out. But they did give us this information.

Do you commit to use the tools as provided in the Clean Air Act to address global warming pollution, understanding that we could perfect those tools in legislation?

Ms. JACKSON. Yes, Madam Chair. Not knowing what is in the report, certainly I would say that I would look forward to working with EPA's staff openly to discuss their views on ways that we can use the Clean Air Act.

Senator BOXER. Excellent. We look forward to getting you that report.

This next question is on Superfund, human exposure to Superfund. There are 1,255 Superfund sites in the Nation. These sites have dangerous chemicals such as lead, mercury, benzene that cause cancer, harm the nervous system and damage cognitive thinking ability. And children, again, are especially at risk. One of the things I often say, children are not little adults. They are growing, they are changing, and we need to treat them differently.

Currently, EPA knows of 92 Superfund sites where human exposure is out of control, their words, and 175 sites where there is insufficient information to determine if human exposure is under control. This is intolerable not only to me, but to many in the Senate.

Do you commit to develop a plan to control such exposures and get needed data in your first 3 months as Administrator?

Ms. JACKSON. Certainly, Madam Chairman. The only caveat I would have is that I would want to ensure that in those cases where resources are an issue, because I simply don't know the details of these sites, that we cannot spend money we do not have. The lack of ability to fund actual cleanups of sites has resulted in slowdown.

Senator BOXER. Well, let me assure you, I agree. I am not asking you to commit to cleaning them up unless you have the money. But what I want from you is an honest answer as to what do we need to clean up these sites where the waste is out of control. It is our job to get you the money. You can't do that, and is going to be President-elect Obama, it is going to be priority of his, hopefully, to do so. But I am not asking you to say, we will cleanup all of these sites. What I am asking you is will you please give us a commitment to develop a plan to control those exposures at these sites that EPA says human exposure is not under control, the 92 sites.

Ms. JACKSON. Yes.

Senator BOXER. OK. And on pesticide testing, I believe very strongly that EPA should do everything in its power to protect children from dangerous exposure to toxic pesticides. Pesticides are designed to kill or harm living creatures. Children are especially at risk from exposure to such substances.

Now, in my State, with a huge agriculture industry, one of the biggest, the biggest probably in the Country, and I work with them. Because they need to be able to control the pests. But there are ways to do it that are less harmful. In 2005, I helped to pass a law that banned intentional pesticide exposure studies on pregnant women and children, and required—these are intentional studies using women and children as the subjects, OK? We talked a little

bit about the one that Mr. Johnson was so proud of, in Jacksonville, Florida, with the poor people, giving them free things to entice them to let their kids crawl around where pesticide was sprayed. We talked about that. And we finally passed this legislation and we said, we need EPA to enact rules, using the highest standards of ethical protections in pesticide studies.

Now, the rules that they promulgated, not a surprise, do not comply with the law. EPA's regulations have been challenged in a lawsuit, another one, because of that. And I filed an amicus brief in this proceeding.

Do I have your commitment that EPA will follow the letter of the law that Congress enacted to protect people from intentional testing? Will you work with the Committee to ensure that EPA's pesticide testing regulations comply with the law?

Ms. JACKSON. Yes, if confirmed, absolutely. EPA will follow the law in all cases, but especially in this one. I would be happy to work with the Committee.

Senator BOXER. OK. We are getting down to the very end, you will be happy to know.

This is about the Office of Children's Health. They have been undercut and underfunded in their mission to protect children's health. I have an ongoing Government Accountability Office investigation into the use and management of this office.

As Administrator, will you make certain that this office, the Office of Children's Health, has strong leadership, and that the office proactively works to ensure that other EPA programs and activities effectively protect children's health with the full authority of the Office of the Administrator behind it?

Ms. JACKSON. Yes, Madam Chairman. That would be one of the things I would be very proud to do.

Senator BOXER. Well, that is good. Now we are down to two more. Now, you have so many supporters in such places as the Sierra Club and community leaders. You also have a couple of detractors, one, the Public Employees for Environmental Responsibility. And I told you I was going to ask you this question, because we don't want to end the hearing without your having a chance to clear the record on what they have said.

How do you respond to the allegations from them? They say you are not a strong enough protector of the public health. And could you address the following: the Kiddie College controversy, your views on polluters self-certifying that property is clean, and New Jersey's failure to enact the State perchlorate drinking water standard? If you could respond to those, I would appreciate it.

Ms. JACKSON. Certainly. And Madam Chairman, I appreciate the opportunity to do so. I will take them in order, and I may forget one in between, so remind me of the order.

Kiddie College I remember was first. Kiddie College was a tragedy. It was, as we discussed, a determination that a child care center was operating in what was a former thermometer factory, and that the levels of mercury in the air, the vapor in the air, caused elevated mercury levels in children's blood. There are many things that were done in response to that determination, including shutting down the facility. The facility now no longer is a child care center. I think it was recently knocked down.

But the criticism that I would like to address here is the idea that DEP, and particularly me, did not tell people what we knew when we knew it. I first will address myself. Personally, the day I found out that there was such a thing as a Kiddie College that had mercury results, which is the first time I heard the words Kiddie College, was the day that the owner was notified to move those children out. And the local health department and the mayor and the police.

That said, it is clear from the chronology that the first time a DEP employee drove by that site was months before. And the time period in between the drive-by and seeing a building where he expected to see a factory, and the actual determination that without a doubt, this building was the former factory, is a period that, in hindsight, in retrospect, I wish had never occurred. No parent should have to wonder about the months in between a suspicion and a reality.

And I think that that work was well-intentioned. I think the employees at DEP did a job but could have done even better by erring on the side of just alerting someone or making a phone call. That said, I know that in hindsight, we all wish things had turned out differently. And that is really what I would say to the parents and I have said personally to people about Kiddie College.

I know you asked about perchlorate, so I will do that one, and then remind me of what the third one was.

Senator BOXER. The third one was your views on polluters self-certifying that property is clean.

Ms. JACKSON. So I will do perchlorate. In the State of New Jersey, before I became commissioner, the State of New Jersey has an advisory board that advises it on and does the science to help it determine what MCLs to promulgate. That advisory board, I think in 2005, came out with a level of five parts per billion for perchlorate. The part of what has been said and alleged that is not true is, it is true that the State MCL is just now going to be proposed, probably this month. But New Jersey has been acting and regulating and enforcing a cleanup standard of five parts per billion all the while.

So when we prioritize, as managers often have to, we looked at the work in front of our employees, and this has been a time of shrinking budgets, the entire time I have been commissioner, and we determined that we would do some other regulations first. So it is true that the reg is not out. It is not true that we have not been using that level for quite some time in New Jersey, and that we take quite seriously our requirement to look at perchlorate and its potential impacts on citizens and drinking water.

The last is the hazardous waste site cleanup program in general. In order to answer the questions about consultants, I need to take one step back and remind this Committee that Kiddie College was the tip of an iceberg. I committed in testimony before our State legislature when it happened that the program was broken, that New Jersey's program for cleaning up toxic waste sites, and there are over 20,000 of them now in New Jersey, was broken. And I committed to do a number of things to address that, and not to run away from that, but to try to address it.

And I am proud of several things. First is that when I was commissioner, we embarked upon and completed a new Internet listing of sites and information about sites, so that communities would have more information than they have ever had about sites that are located near them. We also, I committed to putting in place a prioritization scheme for sites, so that the worst sites would get addressed first. And we did that. It is not quite done yet, so it is late. But it is late because it relies on GPS technology, and for the first time ever, site-specific pollution data. So we marry those two in assessing risks. So it has taken longer than I would like, but I think it is aggressive.

We strengthened the enforcement rules for sites and we changed the way we recover costs, so that we now recover about \$20 million of past costs every year in that program that can be used to clean up other sites. And we embarked on an 18-month plus, because the process is still ongoing, process to try to fix what is a broken program.

One of the options that I did look at and do believe has real merit in that State is certifying consultants to ensure that they do quality work. And in exchange for that certification, looking at those sites where it might make sense to pull back DEP oversight to save those resources for more complex sites. I don't believe that that process really has merit at the Federal level, because of the differences in the way New Jersey manages its program versus the Federal program. And indeed, the future of that program is still in doubt, because the State legislature is now considering legislation as to how it wants to fix the site.

Senator BOXER. So if I could say, what you are saying is, you don't anticipate and you are not at all expecting to utilize consultants to certify that Superfund sites, for example, or brownfields are clean? You are going to use the scientists—

Ms. JACKSON. That we have at the agency. The current process uses consultants quite differently at EPA, and I see no reason to change that.

Senator BOXER. OK. I think that is important.

Then for my last question, and then we are going to move to Nancy Sutley, after thanking you, chromium-6 is a heavy metal that has contaminated drinking water supplies in California. Everyone remembers Erin Brockovich, who fought for the people who drank water contaminated with chromium-6. A 2008 study by the National Toxicology Program shows that chromium-6 can cause cancer when ingested. In 2002, EPA had delayed deciding whether to toughen chromium drinking water standards until the recent study was finished.

Will you commit to address the threat posed by chromium-6 through the drinking water laws as quickly as possible?

Ms. JACKSON. The drinking water laws, Madam Chairman, yes. To address it within the authority we already have, absolutely.

Senator BOXER. The authorities that you already have. What is starting to happen here is because of EPA's lack of a record in making these, setting these standards, we have gone off and started to outlaw certain toxics and certain chemicals. We all agree it is not the way to go, to outlaw phthalates, for example, with an ac-

tual law, chemical by chemical. And then I have bills to set standards for chromium, that is not the way to go.

We want you to do this work. We don't want to put it into the political realm. We want to keep it in your realm, your work. So that is why I have asked you the series of questions about chromium-6 and perchlorate and these other things, because we don't want to start having to vote pollutant after pollutant, have to reset the standard and argue back and forth. It is not the right way to go. That is the reason we have asked.

So under the Safe Drinking Water Act, you are going to look at chromium-6?

Ms. JACKSON. Yes.

Senator BOXER. Thank you.

Now, as my staff has discussed with you, follow up questions will be sent to you later today. Although I think you really covered 98 percent of the questions. And tomorrow morning, your responses are due. So that is why—I am sorry, your responses are due by noon Friday morning.

[Laughter.]

Senator BOXER. We will send them to you today and they are due by Friday. I was going to say, now I know why your husband is not going to see you that much, if we gave you overnight. But we give you a couple of days.

The reason we are pushing this is because we want to get this confirmation done. We are actually going to do it by discharge petition, because we don't really have, if the press is interested, we don't yet have our Committee set up. We have colleagues who can't vote quite yet. We expect it momentarily.

And I must thank Senator Inhofe and my Republican colleagues for allowing us to go this way. So our hope is to get this done, and we are trying for Inauguration Day or the next day. So that is why we are pushing you on these questions. That is our plan. That is our plan, and we want to stick to it.

So we thank you very much. I found you to be just an excellent witness. I found your answers to our questions to be extremely direct and I found you to be a breath of fresh air. And I say that with its double meaning, because we do care about air quality in this Committee.

So thank you, Ms. Jackson, we look forward to your speedy confirmation. Thank you.

And we will ask Nancy Sutley to come right up. We are not taking any breaks here. We are just going to move right in.

We are continuing our very important confirmation process. I told Nancy Sutley, by the way, California's loss is the Country's gain, I must say, again, that a lot of people would be worn down and it might just be a little bit of an easier process, even though she had to wait around. So we thank you so much.

I am going to ask you these questions that I have to ask right now to start. Then I have no opening statement, I am going to go last. I am going to ask Senators Carper and Whitehouse to go first, and I will go with whatever statement I have.

So in order for our Committee to exercise our legislative oversight, here are the questions. Do you agree, if confirmed as the Chairman of the Council on Environmental Quality, to appear be-

fore this Committee or designated members of this Committee and other appropriate committees of the Congress, and provide information, subject to appropriate and necessary security protection, with respect to your responsibilities as Chairman of the CEQ?

Ms. SUTLEY. Yes, I do, Madam Chairman.

Senator BOXER. And do you agree to ensure that testimony, briefings, documents, and electronic and other forms of information are provided to this Committee and its staff and other appropriate committees in a timely fashion?

Ms. SUTLEY. Yes, I do.

Senator BOXER. And do you know of any matters which you may or may not have disclosed that might place you in any conflict of interest if you are confirmed as Chairman of the CEQ?

Ms. SUTLEY. I know of no matters that would present a conflict.

Senator BOXER. That is very good.

And what I would like to do is ask you if you have any relatives here who you would like to introduce.

Ms. SUTLEY. Yes, thank you, Senator.

I would like to introduce my parents, Bruno and Sarah Sutley, my brother Steven, my sister Suzanne, who is sitting behind me, and my nephew Nick Sutley.

Senator BOXER. Well, we welcome all. We thank you so much for sharing Nancy with us. And as I said, I think what I am going to do is really just ask questions. So I am going to defer to my colleagues if they have any opening statements at this point.

Senator CARPER. Just to say publicly what I said to Ms. Sutley just a few moments ago, another committee that I serve on has a confirmation hearing starting for the President's nominee for OMB. And I am going to stay for your statement, but I have to leave shortly after that. And I will be submitting some questions for the record, and would just ask that you respond to those.

Congratulations and welcome.

Ms. SUTLEY. Thank you, Senator.

Senator BOXER. Senator Whitehouse, do you have an opening statement?

Senator WHITEHOUSE. Nothing to add to the opening statement at the beginning of the hearing.

Senator BOXER. OK. Very good.

So Nancy, will you please give us your opening statement?

**STATEMENT OF NANCY HELEN SUTLEY, NOMINATED TO BE  
CHAIRMAN OF THE COUNCIL ON ENVIRONMENTAL QUALITY**

Ms. SUTLEY. Thank you, Madam Chairman. I would like to extend my thanks to you and to Ranking Member Inhofe for holding this hearing, and to you for your generous introduction. I also would like to thank all the members of the Committee for their thoughtful consideration and the time that many of them set aside to meet with me in the last couple of weeks.

I have already introduced my family, but I am very pleased that they could join me here today.

Madam Chairman and members of the Committee, I am greatly honored to be President-elect Obama's choice to chair the Council on Environmental Quality. I have committed more than 20 years, the last 15 in public service, to protecting public health and the en-

vironment and to energy and climate-change issues. I have devoted much of that time to harmonizing the efforts of multiple agencies covering different, and in some cases overlapping, aspects of environmental concern.

I also bring the experience of working on environmental policy at the Federal, State, and local level, and a resulting appreciation of the role that each level of government plays in protecting public health and the environment. I understand that no one has a monopoly on creative and innovative ideas and policies that promote sustainability and a strong economy. The sum of this experience has given me a special appreciation for the coordinating role that the Council on Environmental Quality plays.

The President-elect has stated that a strong, sustainable economy and a healthy environment can and must go hand in hand. The President-elect has also emphasized that meeting our environmental and energy challenges is one of the great needs of our time. The Council on Environmental Quality will play an important role in coordinating the efforts of the Federal Government to build a cleaner environment and a sustainable economy and future for our Nation.

I currently am Deputy Mayor for Energy and Environment for the city of Los Angeles, where the Mayor has put a priority on greening the city. I spent 6 years in State government in California, using my environmental and energy experience, serving as Deputy Secretary of the California Environmental Protection Agency, an energy advisor to Governor Davis, and finally as a member of the California State Water Resources Control Board. I also spent 6 years at U.S. EPA, both at Headquarters in Washington, DC. and at Region 9 in San Francisco, working on innovative strategies to reduce air and water pollution.

I am strongly committed to the mission of the Council on Environmental Quality and to the objectives of the National Environmental Policy Act. If confirmed as Chair, I will carry its responsibilities with all that I have learned and with all my energies. I recognize the need to have economically sound environmental policy as part of CEQ's mission.

Madam Chairman, as you know, Congress created the Council on Environmental Quality in the National Environmental Policy Act. The Council's statutory responsibilities fall into three categories.

First, the Council administers the Act's requirement that Federal agencies prepare environmental impact statements before undertaking major actions that significantly affect the environment. My goal, if confirmed, will be to administer that requirement in a straightforward, organized, and efficient way that assures the public that the Federal Government understands its environmental responsibilities as it carries out its activities.

Second, the Act directs the Council to prepare and present to the President and the American public reports on the state of the environment, on environmental trends, and on the environmental impacts of Government policies and activities. My goal, if confirmed, will be to make those reports relevant, concise, and credible.

Finally, the Act assigns the Council the responsibility to develop and recommend to the President policies for improving environmental quality. My goal, if confirmed, will be to help coordinate en-

vironmental policy across the Federal Government and ensure that those policies protect all of our communities. The Council will work with Federal agencies and departments and within the Executive Office of the President to assure the best, most efficient and effective environmental outcomes.

My focus, if confirmed as Chair of the Council on Environmental Quality, will be to ensure that there is a strong science and policy basis to our environmental policy, to move the Nation to greater reliance on clean energy and to increase energy security, to combat global warming while growing the green economy, to protect public health and the environment, especially in our vulnerable communities, and to protect and restore our great ecosystems.

My parents came to the United States in search of a better life. I learned the values of hard work and integrity from them. They also taught me how important it is to give back to the community, and I have devoted much of my career to public service. I have tried to honor those values by working toward protecting our communities and our environment. If I am confirmed, I look forward to working with this Committee and the Congress and to carry out the goals of the National Environmental Policy Act and the mission of the Council on Environmental Quality.

Thank you, Madam Chairman.

[The prepared statement of Ms. Sutley follows:]



**Statement of Nancy H. Sutley  
Hearing on Nominations  
Committee on Environment and Public Works  
United States Senate  
January 14, 2009**

Thank you, Madame Chairman. I would like to extend my thanks to you and Ranking Member Inhofe for holding this hearing, and to you for the generous introduction. I also would like to thank all the members of the Committee for their thoughtful consideration and for the time that many of them set aside to meet with me earlier this month.

I am pleased to be joined by members of my family – my parents, sister, brother and their families.

Madame Chairman and members of the Committee, I am greatly honored to be President-Elect Obama's choice to chair the Council on Environmental Quality. I have committed more than twenty years – the last fifteen in public service – to protecting public health and the environment and to energy and climate-change issues. I have devoted much of that time to harmonizing the efforts of multiple agencies covering different – and in some cases overlapping – aspects of environmental concern. I also bring the experience of working on environmental policy at the federal, state, and local levels, and a resulting appreciation of the role that each level of government plays in protecting public health and the environment. I understand that no one has a monopoly on creative and innovative ideas and policies that promote sustainability and a strong economy. The sum of this experience has given me a special appreciation for the coordinating role that the Council on Environmental Quality plays.

The President-elect has stated that a strong, sustainable economy and a healthy environment can and must go hand in hand. The President-elect also has emphasized that meeting our environmental and energy challenges is one of the great needs of our time. The Council on Environmental Quality will play an important role in coordinating the efforts of the federal government to build a cleaner environment and a sustainable economy and future for our nation.

I currently am Deputy Mayor for Energy and Environment for the City of Los Angeles, where the Mayor has put a priority on greening the city. I spent six years in state government in California, using my environmental and energy experience, serving as Deputy Secretary of the California Environmental Protection Agency, as an energy advisor to California Governor Davis, and finally as a member of the California State Water Resources Control Board. I also spent six years at the US Environmental Protection Agency – both at Headquarters in Washington, DC and at Region 9 in San Francisco – working on innovative strategies to reduce air and water pollution.

I am strongly committed to the mission of the Council on Environmental Quality and the objectives of the National Environmental Policy Act. If confirmed as Chair, I

will carry its responsibilities with all that I have learned and with all my energies. I recognize the need to have economically sound environmental policy as part of CEQ's mission.

Madame Chairman, as you know, Congress created the Council on Environmental Quality in the National Environmental Policy Act. The Council's statutory responsibilities fall into three categories.

First, the Council administers the Act's requirement that federal agencies prepare environmental impact statements before undertaking major actions that significantly affect the environment. My goal if confirmed will be to administer that requirement in a straightforward, organized, and efficient way that assures the public that the federal government understands its environmental responsibilities as it carries out its activities.

Second, the Act directs the Council to prepare and present to the President and the American public reports on the state of the environment, on environmental trends, and on the environmental impacts of government policies and activities. My goal if confirmed will be to make those reports relevant, concise, and credible.

Finally, the Act assigns the Council the responsibility to develop and recommend to the President policies for improving environmental quality. My goal if confirmed will be to help coordinate environmental policy across the federal government and ensure that those policies protect all of our communities. The Council will work with federal agencies and departments and within the Executive Office of the President to ensure the best, most efficient and effective environmental outcomes.

My focus, if confirmed as Chair of the Council on Environmental Quality, will be to ensure that there is a strong science and policy basis for our environmental policy, to move the nation to greater reliance on clean energy and increase energy security, to combat global warming while growing the green economy, to protect public health and the environment, especially in vulnerable communities, and to protect and restore our great ecosystems.

My parents came to the United States in search of a better life. I learned the values of hard work and integrity from them. They also taught me how important it is to give back to the community, and I have devoted much of my career to public service. I have tried to honor those values by working toward protecting our communities and our environment. If I am confirmed, I look forward to working with this Committee and the Congress and to carry out the goals of the National Environmental Policy Act and the mission of the Council on Environmental Quality.

Thank you, Madame Chairman.

**Environment and Public Works Committee Hearing  
January 14, 2009  
Follow-Up Questions for Written Submission**

Questions for Sutley

Questions from:

Senator Thomas Carper

1. In December, the District Court of Appeals remanded the Clean Air Interstate Rule (CAIR). Instead of vacating the rule immediately, the court decided to keep the sulfur dioxide and nitrogen oxide program in place and allow EPA an undetermined amount of time to re-write the CAIR rule to meet their earlier decision. The same court vacated the EPA's mercury rule – which EPA has appealed to the Supreme Court.

What are your thoughts on the CAIR decision and how do you believe we should move forward?

**I believe that the initiative for any regulatory response to the CAIR decision should lie with EPA. Moreover, I believe that it will appropriate for EPA to assist Congress is crafting any legislative response to the decision.**

The previous CEQ Chairman, Jim Connaughton, was very active in the Bush Administration's clean air policies. Will CEQ play a significant role in air quality issues in the Obama Administration?

**If I am confirmed, CEQ will try to be actively helpful without supplanting or presuming to duplicate the expert work of EPA.**

2. In your written testimony, you say one of your priorities is to combat global warming while growing the green economy. I'm happy to hear that you are linking the economic benefits with environmental benefits. Do you expect the Administration to send a climate change bill to the Hill in the next six months?

**I do not know whether the incoming Administration will send a climate change bill to Congress in the next six months. I do expect, however, that the incoming Administration will begin assisting Congress in its legislative efforts on climate policy very soon after Inauguration.**

3. In the past, the CEQ has been very involved in international climate change negotiations – do you expect to continue this role?

**I expect to be involved if I am confirmed, but I do not yet know what specific role the President-elect will want me to play.**

4. Obama has announced Carol Browner will fill a new position- the Assistant to the President for Energy and Climate Change. It is unclear how Ms. Browner will interact with other key environmental leaders – do you know how you will interact with her?

**If confirmed, I will consult with Ms. Browner regarding recommendations to the President on energy and climate policies. If confirmed I will hear Ms. Browner's views on any climate- and energy-related policies that fall within CEQ's responsibilities. If confirmed I will make my own independent judgment with regard to any decisions that are delegated to me by Congress. If confirmed I will advise the President directly on matters that fall within CEQ's expertise, including climate change, whenever appropriate.**

5. In 1975, we created CAFE to reduce fuel usage and saw more fuel efficient cars come on the roads over the next 20 years. At the same time, driving increased dramatically due to a lack of transportation alternatives and the locating of homes far from jobs, schools, doctors, groceries, etc. We are now trying to reduce greenhouse gas emissions and the transportation sector is responsible for 30 percent. How do we prevent making the same mistake of thinking transportation emissions can be controlled only on the car and fuel side? What is EPA's role? And how might this be incorporated into any administration proposal on climate or transportation?

**I believe that an effective federal response to the challenge of climate change presents an opportunity to include policies that are designed to reduce vehicle-miles traveled (VMT) in ways that increase Americans' quality of life. EPA has existing VMT-reduction programs and resources that can be called upon effectively in designing and implementing portions of the federal government's overall response to the challenge of climate change. In addition, there are best practices at the state and local level that should be examined.**

6. When the energy and climate team was announced by the President-elect, the transportation nominee was not a part. Also, transportation was not mentioned as part of Carol Browner's portfolio. Why was this? Do you believe we can achieve energy security or climate goals without the transportation sector?

**I do not know. I do not believe that we can achieve our ultimate energy-security or climate-stewardship goals without addressing the transportation sector.**

7. Will the administration put forward climate change and transportation reauthorization proposals? If so, what will be the role of DOT in the development of a climate proposal? And what will be the role of EPA in a transportation proposal?

**The President-elect supports a cap-and-trade system to cut greenhouse gas emissions and has stated his preference to work with Congress on climate legislation. A decision about putting forward a climate proposal has not yet been made. The administration is expected to prepare a transportation reauthorization**

**proposal. All the relevant federal agencies will be involved in the development of any climate and transportation proposals.**

Senator Frank Lautenberg

1. Do you believe that we need to change the way we regulate toxic chemicals so that we know that chemicals are safe before they are placed on the market?

**I believe that we need to review expeditiously the way in which we regulate toxic chemicals, to identify potential opportunities to increase the assurance that chemicals are safe before they are placed on the market.**

2. The Department of Interior is about to finalize a rule that would exempt agencies from having to consult with the U.S Fish and Wildlife Service on the impact of federal projects on endangered species.

Would you support overturning this rule?

**If confirmed, I would support expeditious review of that rule to examine its factual basis and consistency with the law.**

3. You were involved in the greening of Los Angeles' public buildings when you were Deputy Mayor for Energy and the Environment.

Based on the Los Angeles experience, are there steps the federal government should be taking to encourage more green building?

**The President-elect has called for the federal government to take the lead in reducing its energy consumption and with specific goals for existing and new federal buildings. The City of Los Angeles adopted a requirement in 2004 that all new city buildings meet green building standards and now has more than one million square feet of green municipal buildings. In addition, the City's General Services Department and Water and Power Department are retrofitting city buildings to reduce energy consumption. The Mayor also directed City departments to reduce their energy use by 10 percent.**

Senator Benjamin Cardin

1. It is my hope that you and President Obama will make restoring the Chesapeake a priority. I believe this is necessary because solving the nutrient pollution problems of the Chesapeake is such a massive undertaking that it requires the assistance of many federal agencies. Will you use your position at CEQ to better coordinate the Federal effort on Bay restoration?

**Yes.**

2. Will you join me for a trip to Annapolis and on the Bay to see the restoration effort first hand?

Yes.

3. Do you support legislation to overturn the two U.S. Supreme Court decisions that have restricted the scope of the federal Clean Water Act in order to return the law's historic protections for all "waters of the U.S." as defined before the Court's rulings?

**The President-elect has supported legislative efforts to codify the traditional interpretation of "waters of the United States." If confirmed, I look forward to working with you and others on this legislation.**

4. Will you make sure that EPA retains oversight of Superfund and RCRA cleanups at federal facilities, particularly Fort Meade and Fort Detrick?

**I have not been fully briefed on the current situation at Fort Meade and Fort Detrick but as a general matter I believe EPA should maintain oversight of cleanups at federal facilities.**

5. Will you join me for a tour of Fort Meade and a meeting with DoD and EPA officials?

Yes.

6. Will you pledge to work with me and the members of this Committee to review the impacts of Mountain Top Mining and implement efforts to mitigate the adverse impacts of this destructive mining practice?

Yes.

Senator Tom Udall

1. NEPA is fundamental to involving the public in decisions impacting our nation's natural resources. However, the act is often criticized as being a cumbersome hurdle for industry.

Is it possible to ensure that the full purpose of the act is carried out while at the same time invigorating industry and our national economy?

Yes.

The current administration has a history of exempting, softening, or even ignoring the NEPA process. What steps will you take to ensure that the respective agencies consistently fulfill NEPA requirements?

**One thing I will do is clearly communicate to all federal agencies the President-elect's commitment to full and responsible implementation of NEPA.**

Senator James M. Inhofe

1. During the one of your response at the nomination hearing, you stated that you planned on 'working closely' with Carol Browner, the new White House "czar" of energy, environment and climate change. Ms. Browner position adds a new, seemingly unwelcome dimension to who exactly has the final word on environmental policy coming from the White House. CEQ is tasked with managing the policy review process directly up to the President. Ms. Browner's role would seem to usurp CEQ's role as the key player advising and representing the White Position on environment and energy issues. *Please clarify what you mean by 'working closely' with Ms. Browner, as well as your understanding of the Obama Administration's policy decision-making process for environmental issues? Can you describe for me how you believe the energy, environment and climate change policy process will be governed and executed in the White House and what precisely Ms. Browner's role will be?*

**If confirmed I will consult with Ms. Browner regarding recommendations to the President on energy and climate policies. If confirmed I will hear Ms. Browner's views on any climate- and energy-related policies that fall within CEQ's responsibilities. If confirmed I will make my own independent judgment with regard to any decisions that are delegated to me by Congress. If confirmed I will advise the President directly on matters that fall within CEQ's expertise whenever appropriate. The President will have more than one adviser on climate and energy policy, just as he has more than one adviser on economic policy. Ms. Browner will be one of those advisers. She will have the time to focus exclusively on those two, highly important and interlinked areas of policy.**

2. Recently, we have heard claims of executive privilege and "unitary executive decision" over communications between the White House and EPA with my colleague the Chairwoman's investigation of the current Administration's record on the California waiver, as well as an endangerment finding for carbon. *In your opinion, does Ms. Browner's position mean that now every climate or energy related decision out of EPA will be considered as a unitary executive decision and therefore could invoke executive privilege?*

**No.**

3. If confirmed, will you pledge to develop good working relationships with all Senators and staff on this Committee, Democrat or Republican by promptly responding to any written or phone inquiries, sharing information as soon as it becomes available – and directing your staff to do the same?

**Yes.**

4. The jurisdiction of the EPW Committee also includes ensuring that commercial and public transportation infrastructure needs are met. During the best of times it is a very daunting. I believe that we must streamline the bureaucracy that delays important infrastructure projects approved by this Committee, specifically those delays created by

the National Environmental Protection Act or NEPA. *Could you please describe your experience, particularly in your non-Federal positions, with the NEPA process, as well as any ideas you have to improve and expedite the process if you are appointed as CEQ Chair?*

**In my work in state and local government, I have worked on a number of programs and projects subject to NEPA. NEPA review provides important information about the environmental impacts of federal activities. If confirmed, one of my goals will be to instill NEPA officers, their superiors and agencies throughout the federal government with confidence that, so long as they start the process promptly and work on it with reasonable diligence, CEQ will itself be diligent and will use common sense to avoid delay and red tape.**

5. California Governor Arnold Schwarzenegger has asked President-elect Barack Obama to waive or greatly streamline federal NEPA review for several infrastructure projects in the first 120 days of his administration in order to spur job growth and expedite construction of new roads, mass transit and energy systems in his state. *What is your opinion of the Governor's request? Will the Obama Administration consider the economic urgency of job creation by setting aside or streamlining NEPA review when moving forward on any infrastructure-based stimulus proposal? If so, please detail how. If not, please justify why not given these dire economic times.*

**It is my understanding that most, if not all, of the stimulus projects will have completed NEPA. There may be ways to ensure that stimulus projects receive priority in the NEPA process so that they move especially quickly. I have not seen any information that would lead me to believe that a waiver of NEPA for stimulus projects would be necessary or responsible.**

6. Will the Obama Administration seek any legislative or regulatory changes to the ESA? Do you believe that the ESA is in need of reform? What action or position, if any, will the incoming administration take on any of the ESA related rules finalized in 2008 (i.e., listing decisions, reform of the consultation process, etc.)?

**I want to do what I can to make the ESA work better, but it is too early to tell whether that requires any legislative or regulatory changes. The ESA has been most successful where the federal government has worked with states, tribes, local governments and private landowners. The Administration will engage partners not only to ensure the protection and recovery of listed species, but also proactively to identify and protect vital habitats before the plight of species becomes so dire as to warrant action under the ESA.**

7. Please describe how CEQ will ensure that all federal agencies work cooperatively to implement the ESA in coordination with other federal laws, e.g. Clean Air Act, FIFRA, including how CEQ can compel the agencies to better make use of specialized federal expertise outside the wildlife and fisheries Services, i.e., USFWS, NOAA-NIMFS.



**If confirmed, I will look into this issue and meet with the key federal agencies to discuss ways to better coordinate ESA implementation with other federal laws.**

8. The legislative debate regarding Clean Water Act jurisdiction will be a controversial issue that the incoming Administration will have to deal with. *Please give me your thoughts on what you'd like to see accomplished under this administration regarding Clean Water Act Jurisdiction keeping in mind the federal interests and state prerogatives envisioned in the original Act?*

**If confirmed, I would be committed to helping ensure effective implementation of clean water programs and will work with states, EPA, DOJ, and the Army Corps. I look forward to working with the Committee on effectively responding to the important questions of Clean Water Act jurisdiction.**

9. Recent court rulings have required the Environmental Protection Agency (EPA) to administer Clean Water Act National Pollution Discharge Elimination System (NPDES) permits for thousands of marine vessels. Unfortunately, NPDES permits were intended to regulate stationary sources of pollution, not transient sources. With that in mind, vessel safety is not contemplated in NPDES permit requirements raising concerns of vessel owners and operators. *Will you commit to working with Congress and convening expert personnel in the administration from both EPA and the Coast Guard to find solutions that will ensure vessel safety and successful interstate commerce without compromising environmental health? Please provide details.*

**Yes. I am not familiar with particular issue but will follow up with the EPA and Coast Guard.**

10. A company seeking to develop an offshore lease must have an array of state and federal permits. In some instances over 30 permits from 30 different agencies are required to drill one exploratory well. Experience has shown that offshore energy development can occur in an environmentally responsible manner and the oil and gas industry has a remarkable safety record to prove that point. We must find a way to rationalize the process without short-circuiting any environmental safeguards. In recent years, the Bureau of Land Management ran a successful pilot program to speed the permit delivery process by bringing all the permitting agencies together in a single office – one stop shopping, if you will. *Would you support a regional permitting office in Alaska -- with all the federal permitting agencies in a single office?*

**I feel I do not yet know enough about this subject to express a firm view. If confirmed, I would appreciate the opportunity to discuss it with you, your staff, and your colleagues.**

11. As you know, the California Air Resources Board's (CARB) recently drafted a proposal for a Low Carbon Fuel Standard (LCFS) which calls for a reduction in carbon intensity of 10.5 percent for gasoline by 2020. Successful implementation of a Low Carbon Fuel Standard would require a massive substitution of traditional motor fuels with

alternative and renewable fuels. Last April, CRA International found that under a nationwide low carbon fuel standard to reduce greenhouse gas emissions by just 5 percent by 2015, gasoline prices would increase by more than 140 percent. *During your tenure at CARB, what role did economic analysis play in developing this policy? Do you believe large increases in the price of gasoline are acceptable in order to reduce carbon emissions and implement a Low Carbon Fuel Standard?*

**I have worked at the California State Water Resources Control Board and the California Environmental Protection Agency but not at the Air Resources Board and was not serving in state government when the proposal was issued. I am not familiar with the specific report on a low carbon fuel standard. However, in the policy development process, I think it is important for credible peer-reviewed economic analysis and data to be considered by decision-makers.**

12. Clean burning natural gas has only half of the greenhouse gas emissions of coal, so demand will likely accelerate under any mandatory limits. Should we increase access and production for U.S.-based natural gas and LNG terminals to prevent a shortage or crippling cost increases?

**I believe that the effect of any mandatory federal climate policy on natural-gas demand and price will depend heavily on the specific design of that policy. If confirmed, I would appreciate the opportunity to talk to you and your staff about ways to prevent shortages and price spikes.**

13. According to a recent Standard and Poor's report on energy released last week, a lack of adequate infrastructure remains one of the biggest obstacles to increasing domestic natural gas supply. If natural gas is to play an increasingly important role in meeting low-carbon energy needs then what, if anything, should Congress do to encourage further pipeline infrastructure construction?

**Natural gas is an essential fuel for the electric sector, industrial use, and heating. I am not familiar with this new report and would like to report back to you after consulting with key staff at the agencies on the pipeline infrastructure.**

14. Do you believe that coal can and should remain an important source of energy for the U.S. in the future, even if that world is carbon constrained?

**Yes.**

15. Do you support significant increases in the use of nuclear power to help reduce carbon emissions along with renewable energy and increased energy efficiency?

**I believe that placing a price on carbon emissions across the United States would significantly increase the incentive for private investment in increasing nuclear power generation and increasing use of renewable energy in this country.**

16. A broad and growing array of groups, including business organizations, environmental justice advocates, opinion leaders, including former Vice President Al Gore, economists and scientific advisors, such as Mr. James Hansen, support a carbon tax or fee over a cap and trade system. Why do you believe so many organizations support a tax over a cap and trade program? And, in light of the significant support for a tax in lieu of a cap and trade program, can you assure us today that this Administration will give all options a thorough review before committing to a specific plan?

**The President-elect has stated a preference for a cap-and-trade system for a few reasons. First, a cap-and-trade system, unlike a carbon tax, actually tells you the amount by which greenhouse-gas emissions will be reduced – which is the whole purpose of the policy. Second, at least for large stationary sources such as power plants, cap-and-trade has already proved its effectiveness in this country in similar applications. While the President-elect has stated his preference, he has also stressed that what he most cares about is results – reducing greenhouse-gas emissions while reducing dependence on oil and creating green jobs. He has indicated that he will listen to honest brokers on Capitol Hill and not let ideology get in the way of real progress. I look forward, if confirmed, to working with this Committee to achieve that progress.**

17. Knowing that China, India, and Brazil are not signatories to Kyoto and operate without any substantive regulation of greenhouse gas emissions, would you support a safety valve on the price per ton of carbon to ensure that American manufacturing remains globally competitive?

**I am not certain that a price cap in a greenhouse-gas emissions trading market is the best way to ensure that American manufacturing remains globally competitive. I do, however, look forward to discussing the question with you and your staff if I am confirmed.**

18. In a cap and trade regime, what are your views on how legislation can limit the manipulative influence that predatory investors (such as Wall Street investment banks, foreign sovereign funds, or foreign governments such as the Chinese) could have on greenhouse gas markets? Would you support legislative efforts to minimize speculation and manipulation?

**I believe that legislation can, if properly crafted and with proper oversight, minimize the opportunity for speculation and manipulation. I would if confirmed support the effort to craft and enact such measures.**

19. Do you believe we should regulate greenhouse gases under the existing Clean Air Act or by enacting new legislation, such as a newly proposed cap and trade program? If you prefer legislation, please explain your view on how this legislation should interact with, or in some cases trump, the Clean Air Act. Would you be open to supporting preemption of the Clean Air Act? If so, will preemption be included in your legislative proposal? If you do not endorse preemption, can you comment generally on what

provisions of the Clean Air Act you would need in addition to an effective cap and trade program?

**The President-elect's preference and mine is that Congress quickly enact comprehensive climate change legislation that provides EPA with the best tools tailored to address the problem. However, EPA currently has an obligation to act in accordance with the Supreme Court's decision in Massachusetts v. EPA. The ANPRM shows that much could be achieved under the Clean Air Act, and that much of it could be done in a reasonable manner. The Clean Air Act currently regulates air emissions at classes of large facilities that likely would be regulated for their greenhouse-gas emissions under any new cap-and-trade statute to curb global warming. So a new climate law probably would need to clarify the way in which it interfaces with several existing Clean Air Act programs for those sources. The new law would need to do that whether it was styled as an amendment to the Clean Air Act or as new, standalone chapter.**

Senator George Voinovich

1. I understand that President-elect Obama has decided to create a position to oversee and coordinate the administration's work on energy and climate issues. What is your vision for your relationship with Carol Browner in terms of policy formulation, messaging, and management?

**If confirmed I will consult with Ms. Browner regarding recommendations to the President on energy and climate policies. If confirmed I will hear Ms. Browner's views on any climate- and energy-related policies that fall within CEQ's responsibilities. If confirmed I will make my own independent judgment with regard to any decisions that are delegated to me by Congress. If confirmed I will advise the President directly on matters that fall within CEQ's expertise whenever appropriate. The President will have more than one adviser on climate and energy policy, just as he has more than one adviser on economic policy. Ms. Browner will be one of those advisers. She will have the time to focus exclusively on those two, highly important and interlinked areas of policy.**

2. President-elect Obama made many admirable campaign promises when he released his Great Lakes plan this past September. It included a commitment for \$5 billion in new federal funding and a Great Lakes coordinator. How will you work with the Administration to fulfill the promises of this plan?

**If confirmed, I will coordinate all the key agencies involved in restoring the Great Lakes and look forward to working with you and the Committee on this important natural treasure. My first priority will be to develop a plan of action with OMB, EPA, and other key agencies. The plan will focus on sewage repairs, toxic cleanup, wetland restoration, beach cleanup, and invasive species.**

3. Since I presume that you will play a key role as a member of the new White House Energy and Climate Council, I would like to hear your views on nuclear power. First of all, would you agree that, while nuclear is certainly not the only solution when it comes to energy independence or climate change, there is no solution without nuclear?

**The President-elect and I believe that the United States needs a number of low-carbon energy technologies in order to curb global warming, and that nuclear power needs to be one of those tools.**

4. As I mentioned at the hearing, the EPA's analysis of the Lieberman-Warner climate change legislation assumes, even with the aggressive growth in renewable energy sources, about 150 new nuclear power plants will be needed by 2050, to achieve the carbon cap mandate and to meet the growing demand for base-load power. And indeed, the 104 nuclear power plants operating today represent over 70 percent of the nation's emission-free generation portfolio, avoiding 680 million tons of carbon dioxide, compared with 13 million tons for wind and a half million tons for solar. However, those opposed to nuclear power often cite nuclear waste and nuclear plant safety as reasons to dismiss nuclear power from our nation's future energy portfolio. We at this committee happen to know a little bit about those issues. Since 2001, I have participated in 24 committee hearings on nuclear safety, and I chaired seven of those hearings as chairman of the Subcommittee on Clean Air and Nuclear Safety. The conclusion I have drawn from these hearings is that the nation's 104 nuclear plants have been operating safely, in part, because of this committee's vigilant oversight of the Nuclear Regulatory Commission. Regarding the issue of nuclear waste, the NRC, GAO, and others have testified that storing spent nuclear fuel onsite at each power plant, in both dry casks and wet pools, is safe and secure for up to 100 years. This will give us time to pursue building new plants while developing an alternative waste policy that makes sense not only from the technical policy standpoint but also politically acceptable. To that end, I introduced a bill late last year, "U.S. Nuclear Fuel Management Corporation Establishment Act Of 2008," together with Senators Domenici, Murkowski, Dole and Alexander. I would like to get your views on expanding the use of nuclear power going forward.

**I believe that placing a price on carbon emissions across the United States would significantly increase the incentive for private investment in increasing nuclear power generation in this country.**

5. Adoption of a national regime to regulate greenhouse gas emissions will lead to higher energy prices for industrial and residential consumers. Based on the E.U. experience, we could easily see a major spike in the price of natural gas. How would you propose that we mitigate against these energy price spikes? Particularly, how do you propose that we protect globally competitive industries from dramatically higher electricity costs stemming from climate change legislation?

**I believe that work on climate legislation in the Senate and the House in the last Congress – and additionally the revisions to the European Emissions Trading**

**System – have identified categories of measures that could, if included in a federal climate statute and designed properly, safeguard the health of globally competitive industries that employ people in the United States. If confirmed I would look forward to exploring the relative merits of such measures with you and your staff.**

6. As part of a climate change package, would you support efforts to increase domestic production of natural gas and nuclear energy?

**If confirmed I would look forward to engaging you and others in Congress in an open discussion that includes the topics of natural-gas supply and nuclear power.**

7. China, India, and Brazil are not signatories to Kyoto and operate without any regulation of greenhouse gas emissions. China has surpassed the United States as the world's largest emitter of greenhouse gases. Moreover, globally competitive manufacturers are particularly sensitive to higher energy costs, an increase in which will result in the loss of U.S. jobs in industrial states and an increase in global carbon dioxide as those jobs and industries move off-shore to countries without equivalent programs. This issue is why the U.S. didn't move forward in adopting the Kyoto protocol and until resolved, will be a major impediment to the adoption of a national climate policy. Shouldn't America's willingness to regulate greenhouse gases and suffer the resulting increase in energy costs be conditioned on binding global emissions requirements? In its absence, how can these competitiveness and environmental concerns be addressed?

**The President-elect and I believe that both the United States and the world's other major greenhouse-gas emitting nations must adopt effective policies for reducing their emissions. The President-elect and I believe that the United States must show leadership by adopting such a policy in the United States if we are to convince the governments of other large emitting nations to do so. The President-elect and I believe that if the United States adopts a strong and well-designed policy for reducing greenhouse-gas emissions, and if the world's other major emitters follow suit with effective policies, then the result will be reinvigoration of American industry and the preservation and creation of good jobs in this country.**

8. Successful development and implementation of clean coal technologies, such as integrated gasification combined-cycle (IGCC) and carbon capture and storage (CCS), carry the promise that coal will remain a viable energy resource to provide affordable and clean electricity to American homes and businesses. At the present time, however, IGCC facilities can cost over a billion dollars. Without significant federal assistance, the expense of such projects could significantly increase consumers' electric bills, disproportionately impacting low income groups and those on fixed incomes, such as social security. For instance, the Wisconsin Public Service Commission and the Arizona Corporation Commission rejected applications to construct IGCC facilities, citing, in part, the expense and resulting rate increases.

Will you pledge that, as we move forward to deal with climate change policy, this Administration will pay special attention to prevent outcomes that would significantly

increase consumers' electric bills, and thus disproportionately impact low income groups and those on fixed incomes?

**Yes.**

Senator Johnny Isakson

1. On October 16, 2008 President-elect Obama made the following statement in Florida regarding water allocation issues in the Apalachicola-Chattahoochee-Flint and Alabama-Coosa-Tallapoosa river basins: "As President, I will make protecting Florida's water resources a priority." This statement was interpreted in my state as an overt statement by him to advantage Florida's water needs over Georgia's and, for that matter, Alabama's. Will you pledge to me that this is not the case, that the Administration and the President-elect will not give preference to one state over another?

**Yes.**

a. Will you pledge to me that you and your staff will do nothing to reverse the steps we have taken thus far to get the Governor's talking and to ensure the Federal government does not advantage one state over the other in this process?

**Yes.**

b. Will you pledge to me that you and your staff will not give preference to one state over another?

**Yes.**

2. How familiar are you with the steps CEQ took to facilitate negotiations between Georgia, Alabama and Florida on the ACT/ACF River basin issues?

**I have not yet been fully briefed on those steps.**

a. What role, if any, do you plan to play in these negotiations?

**From what I understand of the issue, CEQ could play a constructive mediating role. If confirmed, I would want to do that while also ensuring that CEQ does not play a disruptive role. I believe it would be important for me to remain in close contact with you and the other members of the federal delegations from the affected states.**

3. What are your thoughts on the statutory requirement that the Army Corps of Engineers update the water control manuals on the ACT and ACF River Basins?

**I recognize this is a critical issue to Georgia, Alabama, and Florida and understand that the Corps is working to revise the water control plans and manual. I would**

**seek a briefing as soon as possible by the Army Corps of Engineers, EPA, and the Fish and Wildlife Service.**

4. What is your assessment of the effectiveness of the Endangered Species Act?

**I believe that the Endangered Species Act has been very effective in many cases and in many areas. I believe that many of the complaints that have arisen stem from implementation challenges rather than statutory design flaws.**

5. Are there aspects or provisions of the ESA that you feel need to be reformed?

**If confirmed I believe that one of my responsibilities would be, working with the Department of the Interior, to help coordinate an expeditious and helpful review of the regulations that recently were promulgated under the Act and of the concerns that motivated that rulemaking.**

6. Do you have any thoughts regarding the impact of the ESA on interstate and intrastate use of water?

**At this point I do not have firmly-held views on the subject, broadly-stated. If confirmed, I would benefit from receiving your views and those of your staff.**

Senator David Vitter

1. If you have a choice between protecting the environment and in turn shrinking the economy or expanding the economy and improving the environment as technologies advance, which would you choose as the appropriate policy decision?

**I believe there are few if any situations that would present such a stark choice. In the event of such a choice, however, I would have to need to ensure that I carry out any and all clear mandates that Congress has directed at CEQ by statute.**

2. Recreational fishermen and conservationists were pleased on September 26, 2008 when President Bush signed an amendment to Executive Order #12962. It stated that "recreational fishing shall be managed as a sustainable activity in national wildlife refuges, national parks, national monuments, national marine sanctuaries, marine protected areas, or any other relevant conservation or management area or activities made under any federal authority, consistent with applicable law." Do you plan to ask the new Administration uphold this EO or will you move to repeal it?

**I currently do not have a set plan one way or the other. If confirmed I would appreciate the opportunity to hear your views.**

3. What role do you feel the international community should play in determining the United States' climate change policy?



**I believe that US climate policy should be determined by US interests. I believe that US interests include ensuring that there is an effective, global response to the global problem of man-induced climate change.**

4. What kind of “flexible mechanisms” for industry and energy producers would you like to see available in future climate change legislation?

**I believe that recent legislative debates in Congress and recent work to revise the European Emissions Trading System have identified a range of flexibility mechanisms for this Congress to consider as it crafts climate legislation. I do not currently have any rigid opinions about the relative merits of those mechanisms.**

5. One of the problems in Louisiana with our hurricane clean-up efforts is the incredible amount of regulatory hoops we have to jump through to get projects moving. Do you ever feel there is an appropriate time to streamline regulations and when would you feel such an action is appropriate?

**I believe that there can be an appropriate time to streamline regulations. My main view is that, in the absence of statutory amendment by Congress, any streamlining by an agency needs to occur in a way that is in keeping with the directives and purposes of the underlying statute.**

6. Do you see nuclear energy as an opportunity to improve environmental quality given its lack of CO2 emissions, and would you allocate carbon credits to the nuclear energy industry if we went to a cap and trade system?

**I believe that nuclear energy can be part of a plan to improve environmental quality by reducing greenhouse-gas emissions. I do not currently have a firm view as to whether carbon credits should be allocated to the nuclear energy industry under a cap-and-trade system. My opinion probably would depend on the other provisions in the system and on the actions, if any, that the nuclear energy industry would need to take in exchange for receiving the credits.**

Senator John Barrasso

1. Much has been said about how we need to create green jobs to spur our economy. Do you believe that the National Environmental Policy Act (NEPA) should be streamlined in instances where we need to ensure, for example, the construction on federal lands of wind turbines and the transmission lines needed to deliver their power to communities across America?

**I have not yet seen information that would lead me to conclude that amendments to NEPA itself would be necessary or warranted to achieve those purposes. If confirmed, however, I would be open to listening to your views on the subject.**

2. In these tough economic times, do you believe the loss of jobs and other economic impacts of blocking certain projects be weighed more heavily in making decisions under NEPA?

**I believe that when NEPA is applied with common-sense and efficiency, in the way Congress intended, it has positive economic – including employment – impacts.**

3. Americans have suffered in the past under staggering energy prices at home and at the pump. Much of this is due to foreign countries who supply our energy. If America is to become energy secure by developing our own resources, shouldn't we consider energy independence as a serious factor in making decisions under NEPA?

**I believe that American energy security is enhanced when we ensure – including through efficient and sensible application of NEPA – that domestic energy projects proceed in ways that are not looked back on several years later by surrounding communities as having been a mistake.**

4. How can NEPA be improved to address the concerns of people in the inter-mountain West who view the law as a tool by outside groups to block development that creates needed jobs?

**I believe it is important for CEQ to proactively monitor and advise on the on-the-ground application of NEPA, in order to help avoid incidents that cause local communities and governments to lose faith with NEPA altogether.**

5. Do you believe NEPA is abused by outside groups? Please give me some examples.

**I do not have specific examples in which I am certain that there was abuse rather than an unfortunate collision of events. I am aware, however, of a significant perception of abuse in many parts of the country. For that reason, I believe it is important for CEQ to proactively monitor and advise on the on-the-ground application of NEPA.**

6. In Southern Wyoming and Northern Colorado we are experiencing a bark beetle epidemic in our forests. We have mountain ranges of standing dead trees. It is literally a tinderbox. There are small communities surrounded by this devastation. If a fire were to start today, people would be in extreme danger and there would be significant ecological damage to forests and watersheds.

The Forest Service is working on hazardous fuels reduction as best they can. In order to complete the NEPA requirements for these projects, they can only process one watershed at a time. And NEPA on each watershed takes a year and a half.

This is a management gamble. We have no way to know where the fire will start first, and NEPA is preventing large scale action to reduce the danger.

Does this situation mesh with the Obama Administration's interpretation of NEPA? Is this how that law should serve forest communities?

**This reads to me like precisely the kind of situation in which it would be appropriate for CEQ to be proactively involved.**

Or are you prepared to propose changes? Can we build in flexibility for emergencies and unusual circumstances?

**I appreciate very much your concern about the situation you describe. I would like to respond to your questions by committing that, if I am confirmed, I and my staff will listen to your concerns and work hard to get to the bottom of the situation.**

7. You stated in your meetings with me that you thought Carol Browner would “lend her expertise” to your Department but that the “ultimate call is with the President” in terms of decision making.

**Yes, I did say that.**

8. How do you see your role in between Energy Czar Browner offering advice and the President making decisions? If Carol Browner recommended a policy action regarding your department that contradicted your position, what action could or would you take? Would you go to the President or would you accede to her advice?

**If confirmed I will consult with Ms. Browner regarding recommendations to the President on energy and climate policies. If confirmed I will hear Ms. Browner’s views on any climate- and energy-related policies that fall within CEQ’s responsibilities. If confirmed I will make my own independent judgment with regard to any decisions that are delegated to me by Congress. If confirmed I will advise the President directly on matters that fall within CEQ’s expertise whenever appropriate. If the situation you describe were to arise, then yes, I would bring it to the President’s attention. Again, if confirmed I will make my own independent judgment with regard to any decisions that are delegated to me by Congress.**

9. With regard to NEPA, you stated in our meeting that you would work to “make sure NEPA is implemented in a smart and efficient way.” You also stated that you would work to enforce NEPA “without causing unnecessary delay” and that you would make it “pretty painless” for folks out West.  
Would you be willing to work with me to ensure that happens?

**Yes.**

Senator BOXER. Thank you.

Senator CARPER. Madam Chairman, I need to leave. But can I just say one quick word?

Senator BOXER. Yes.

Senator CARPER. I was in the back room saying hello, meeting Kenny Jackson, Lisa's husband. And Nancy and her family walked right by and I didn't say hello, I just didn't know who you were. I just want to say, particularly to your parents, a special thanks for raising your children and instilling in them the kinds of values that Nancy has spoken to. Kids don't end up this well without the involvement of Mom and Dad, and we just appreciate very much what you have done in providing her for our Country. Thank you.

Senator BOXER. Thank you, Tom. You speak for all of us.

Providing technical support is my first question. Expert Federal agencies have a long history of working with congressional committees on important matters, at least they did, up until recently, including public health and environmental problems, to ensure that such problems are resolved using the best information available. Do you commit to renewing this cooperative approach to problem-solving between our two branches of Government on public health and environmental issues?

Ms. SUTLEY. Madam Chair, yes, I will.

Senator BOXER. Well, that is what we need to hear.

Could you describe your view of CEQ's role in developing information, assessing public health and environmental threats and an interagency effort to address such threats? Give us an example of how you see your role.

Ms. SUTLEY. CEQ's traditional role and the role I would intend to carry on for CEQ is that it is the voice for the environment in the White House and in the management of the executive branch. So CEQ can call upon the technical expertise in all of the agencies to help us to understand what environmental threats are affecting our Country and how we might address those. And CEQ also plays a role in bringing Federal agencies together when there is a dispute or difference of opinion or just an issue that needs to be resolved between two Federal agencies on environmental policy. I think that is a very important role for CEQ to play, and with the expertise both in-house and in the agencies to ensure that the best environmental decisionmaking is made by the Federal Government.

Senator BOXER. And so you would be advising the President as to where the different agencies are coming out on a certain issue? Take global warming, as an example. If there are differences, you would present those to the President and you would more than likely give him your best view on it, is that correct?

Ms. SUTLEY. That is correct, Madam Chair. The role of CEQ really is to provide advice to the President on the important environmental issues of the day. And global warming certainly is at the top of I know this Committee's list and certainly the President-elect's mind.

Senator BOXER. Now, your predecessor went to the various international conferences on global warming, and in my view, he didn't do much to move it forward. Are you planning to go to Copenhagen, if you are fortunate enough to be confirmed, and work to make sure that the President's point of view is out there?

Ms. SUTLEY. Madam Chairman, if I am confirmed, I will play an important role in the formulation of the executive branch's views on climate policy. But as the President-elect believes, this is an issue that will involve the entire Federal Government, really almost no agency is untouched by climate change and how to respond, formulating an appropriate response to climate change. So I will be working with my colleagues in the White House and Executive Office of the President and throughout the executive branch. So some of those decisions about who attends which conferences have not been made yet.

Senator BOXER. Fair enough.

Ms. SUTLEY. But it will be an organized and complete effort on the part of the executive branch to address global warming.

Senator BOXER. Good. Could you describe what your view of the Office of Management and Budget's role should be in developing interagency environmental health protection efforts, and in resolving interagency disputes over environmental health issues?

Ms. SUTLEY. Well, Madam Chairman, the OMB has a responsibility under executive orders to facilitate a regulatory review process which ensures that all Federal agencies at least have an opportunity to look at regulations before they are issued. I think that the science decisionmaking and the science review should be done by experts in science at the expert agencies like EPA and Interior, where there are experts in the field. I don't view it as the role of CEQ, or I wouldn't expect others within the EOP, unless they are scientists, to have a role in reviewing the science.

But there is a role for, a process for managing regulations to ensure that everyone has a chance to look at them.

Senator BOXER. Well, what has happened in the past is OMB has gotten involved and essentially called the shots on a lot of this in the past. And we are concerned. So let me just say it is a red flag. Now, the Obama OMB may be very different than the Bush OMB. We don't know. But you have to watch out for that, because we want everyone's advice about costs and everything else. But what we look to you for is that leadership on the environment. That is your focus. And we just want to make sure that OMB coming in doesn't change what you think is important strictly from an environmental and health standpoint.

Now, from what you have said, I feel good about it. You said that is your role. And I just would put up a cautionary note here, because OMB sometimes gets themselves infused in these things from a budgetary standpoint. And when they make their calls, they are not always accurate, because they don't really measure the cost of a regulation in terms of its remedial nature, when you save so many people from getting cancer.

So you may find yourself in a struggle sometimes. I guess what I am saying is, look out for that. Because you may come out with what you think is a very cost-effective idea and they will say, no, it isn't. But they don't measure it in the same way that we should be measuring it in terms of the environment. This could come into play, for example, the true cost of different types of energy. We line them up, but did we ever take into account a coal ash spill like the ones we are dealing with now as far as the true cost of coal? On nuclear, it is very clean, but what do we do with the waste?

So I am simply saying that when somebody comes to your office and sits down and puts their feet up on your desk and says, well, you haven't thought about the costs, I think you will need to engage. Because this has been a clear problem for a while here with OMB.

I just have two more questions. The IRIS program, are you familiar with that program?

Ms. SUTLEY. Yes, I am.

Senator BOXER. The IRIS program. The EPA and other Federal, State and local officials used these risk assessments under the IRIS program to create safety standards, including drinking water, clean air and toxic waste cleanup. In April, the Assistant Administrator of EPA, whose name is Peacock, issued a memo that radically altered the agency's process of developing these assessments. This policy put OMB in the driver's seat, this is an example of why I was asking about OMB, and elevated polluters' interests ahead of public health concerns.

The independent GAO found the policy reduced transparency and it harmed the integrity of the risk assessment process, and they recommended it be withdrawn. Now, we didn't go into this question on exactly what was said, but as I remember it, the special interests had a seat at the table, DOD and others, who have a conflict in this. And the whole IRIS program was really taken over by the special interests. And this memo, which has been so highly criticized by the GAO and members of this Committee, we need to see it be withdrawn.

What are your views on withdrawing this memo and on CEQ's role in resolving these types of issues? Because you said that is your role. Where DOD comes in, and EPA is there, what do you see your role in resolving these types of issues while you ensure that you are not delaying public health protections?

Ms. SUTLEY. The President-elect has placed a very high priority on restoring scientific integrity to our environmental policies. I would take that commitment very seriously, if confirmed, and work closely with EPA on how we might address some of these issues that have arisen. As I said, one of CEQ's roles is to be the voice for the environment. CEQ also has this important role of bringing agencies together to try to resolve disputes. I think that I would certainly make that a priority for me, if confirmed, to have CEQ play that role in a constructive way, respecting the science, respecting the technical expertise that lies at the agencies and the commitment to protecting public health and the environment.

Senator BOXER. Well, you know, these problems could go away with the new Administration. But in the old Administration, we had special interest agencies that, you know, DOD had a big interest in stopping some of the cleanup. Because a lot of the toxic cleanup they were involved in. And CEQ was just absent. They didn't do anything.

So I guess I will just say once again, if it turns out that some of the agencies are trying to influence environmental regulations who really don't have that as part of their portfolio, the last I checked, DOD was supposed to defend the Country. And that is what I want them to do. I don't want them to be involved in environmental regulations.

So if you see that over at the CEQ, I assume what you just said will answer my question, that your job as you see it is to say, look, we understand you have concerns for certain reasons, and you may, and you may, but as far as CEQ is concerned, the science says we have to clean it up to this level, and that is what I am going to recommend in terms of your role. Would that be a fair way to describe your role?

Ms. SUTLEY. Yes, Madam Chair. When Congress passed the National Environmental Policy Act and created CEQ, the intent was to make sure that Federal activities, that we were assessing the environmental impacts and considering the environmental impacts of Federal activities, so that the Federal Government could live up to its responsibilities to protect human health and the environment. That has always been CEQ's role and it should always be CEQ's role, and I intend, if confirmed, to make sure that CEQ is a strong voice for the environment in the executive branch.

Senator BOXER. Well, I thank you. Sometimes I feel, well, I didn't see any strong voice in the executive branch for a very, very long time. And just having you here makes me feel really good, that these issues will be raised.

Very last question. What I really want to see, and a lot of us do, is an openness. And we are going to probably be asking you for your opinions and papers and so on. Could we count on that, that you will work with us? Because we are all on the same team here. Our job is to make sure that we protect the public. And your job is to make sure that the White House does the same.

So could we make sure that we have this open relationship where we can really talk to you at a moment's notice and sit down and not have between us the fact that, well, you are in the Executive, we are in the Legislative? It goes to what Senator Voinovich said, the need to really cooperate. Can we get that assurance that you will be there for us?

Ms. SUTLEY. Absolutely, Madam Chair. I believe that as the President-elect does that openness and transparency in our decisionmaking leads to better decisionmaking, and that we have an important relationship between, there is an important relationship between the executive branch and the legislative branch and that we need to work together. I have in my career in State government and local government, we found very helpful and useful ways to work together between the executive branch and the legislative branch.

Senator BOXER. Well, thank you very much.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Madam Chair.

Ms. Sutley, first of all, thank you for subjecting yourself to all of the not particularly appealing attributes of public service. I know that you are in this for the very best of reasons and I applaud your decision to do it. I think particularly at this time in our history, you are stepping into a vitally important role. It will be, I am sure, frustrating and annoying frequently. But I think it will also be fascinating and I hope very rewarding for you, and all the long hours, I very much hope you will look back at as having been worth it.

I want to follow up on the Chairman's point about OMB, since both organizations are located in the White House. To be perfectly

blunt, I think OMB was the political fixer for the Administration in the agency regulatory process in the past. In the IRIS process that the Chairman referred to, OMB had not one, not two but three different inputs into the process, the last one after the public record had closed and when there were no further steps before official release of the regulation. So it had a secret, last-minute review, in essence, of what had been a public APA-based agency rule-making process.

And first of all, whenever you do that, you really make everybody, you play everybody who participated in the public process for a fool when the ultimate end story is that a secret deal was cut between the agency director and somebody at OMB and the rest was just for show. So it is really bad process to begin with. And then it ends up with really unfortunate results. The chair of EPA's own Clean Air Scientific Advisory Committee said that, pointed out how regulations, her phrases were, there was the OMB and the White House who actually set the standard, that the entire agency process had in effect been a sham, that the result was willful ignorance triumphant, and that it was all done by fiat and behind closed doors. That is really lousy practice from a governmental point of view. And the result here obviously was harmful to the health of the people we are all here to stick up for.

As I told, I forget whether I told it to her here in this hearing earlier or when we met, but Administrator Jackson, this is an issue that I have taken up with OMB, and I think their new folks are attuned to it and don't want to continue that tradition, that unfortunate tradition. But I would like to emphasize and reiterate my support for the Chairman's focus on this particular point. It is bad governance, it is bad results, bad policy, all of it. It has to stop, irrespective of who is in power.

I think frankly, assuming we have legitimate governance on this subject going forward, which I very much expect under President Obama, now is the opportunity to try to set up the protocols where that stuff can't happen again when others may come back into power and wish to revisit those techniques. So I emphasize that.

We have never on this Committee had a situation, at least to my knowledge, where we had you coming in, assuming that you are confirmed to run the Council on Environmental Quality and an EPA Administrator coming in and also a White House environmental climate change czar coming in. What can you tell us about the structure of that? Who has what role? They are titles to me at this point, but there is nothing resembling sort of an org chart that helps me place where people all are. What is your view on how that is going to work itself out?

Ms. SUTLEY. Thank you, Senator. The question of the role of the White House Advisor on Energy and Climate Change and sort of how the energy and climate change policies will be formulated is an important one. I speak for myself and I believe Lisa Jackson would say the same thing, which is that CEQ would retain all its statutory responsibilities and its role as advisor to the President on environmental issues, as EPA would continue to function in that way as well.

I think the President-elect recognizes that energy and climate change is truly one of the great challenges of our day, and how we



resolve this is going to take the creativity and thought of a lot of people throughout the executive branch and working with the Congress. So I can tell you that we will be working together closely and that the decisions about which policies to recommend and to pursue will really lie with the President, that he will get our best advice.

Senator WHITEHOUSE. Do you know, for instance, if on climate change issues you will report to the President through Carol Browner?

Ms. SUTLEY. Well, I think we will work together very closely on formulating policies to recommend to the President.

Senator WHITEHOUSE. Well, let me put it this way. When you do know, if you could let us know, let me know anyway, it would be helpful, just for purposes of knowing who to call on what purpose. Because I think we are going to have, as the Chairman suggested, a very close relationship working together, going forward, and knowing how you are structured is important to us, as knowing how we are structured is to you.

The last question I will ask has to do with the oceans. Rhode Island is the Ocean State. In this Committee, we have jurisdiction over the Clean Air Act and the Clean Water Act. Both the Clean Air Act and the Clean Water Act and their enforcement have significant consequences for our waterways, our estuaries and our oceans. And I am wondering, you come from a very significant coastal State. I think we may be able to fight you pound for pound, person for person as to whether Rhode Island or California has more coastline per citizen. But you certainly have it overall.

Senator BOXER. However, without taking any of your time away—I have given you another 5 minutes. But I figure this way. If we did have to fight Rhode Island, 37 million people versus 1 million, I will take it.

[Laughter.]

Senator WHITEHOUSE. You have no idea how fierce Rhode Islanders can be.

[Laughter.]

Senator WHITEHOUSE. So my question to you is, you have been involved with a coastal State, you must have been deeply involved with coastal issues. What is your vision for helping to protect our oceans and coasts, and for coordinating the multi-agency Government approach necessary to adequately address the very serious issues facing our oceans and fisheries and coastal infrastructure and so forth?

Ms. SUTLEY. Thank you, Senator. I think I won't comment on the coastline question of who has more.

Senator WHITEHOUSE. Oh, you have more. It would be more per person.

Ms. SUTLEY. Per capita. But if there is any issue that cries out for interagency coordination and for an entity like CEQ to help to bring Federal agencies together, there are just a panoply of Federal agencies who have a role in dealing with our oceans, with protecting our coastline. I know it is an issue that CEQ has been involved in and we tend to continue that involvement, to look at ways that we can be more effective, to look at ways to reach out to coastal States like Rhode Island and California to ensure that we are doing the things that we need to do to protect our oceans.

It is a very critical issue, and one that is sort of the prototyping of an issue that CEQ can be involved in to bring agencies together and to also ensure that the impact that Federal agencies' activities on a resource like the oceans are well-considered and addressed.

Senator WHITEHOUSE. Yes, I am sort of preaching to the choir here, I am sure. But as you know, for instance, we have seen both considerable warming of Narragansett Bay and species adjustments that have resulted, winter flounder much diminished, scup much increased, for instance, to the great detriment of our fishing community. And we have also seen the beginnings of the ocean rise that will accompany further global warming. There is no likelihood, I think, of it getting better. It is likely to get worse, if anything.

And a little bit of sea level increase can pile up to a very big effect in a flood modeling situation where you have velocity zones. Narragansett Bay, for instance, is sort of a wedge driven up into Rhode Island with Providence at the tip. A fairly thin increment of additional sea level in Narragansett Bay, when it is pushed before a major hurricane, for instance, like the hurricane of 1938, can make an enormous difference in the storm surge up in our capital city at the business end.

So it is really important to us, really, if anything, it is the issue immediately behind climate change, to make sure that there is a comprehensive and thoughtful oceans strategy that particularly focuses on coastal issues. I think it is an area where you will find we are very bipartisan. You can go right down the Atlantic Seaboard and it is all the same Atlantic Ocean, even if Senators have very different political persuasions.

But it is also an area in which our own body, the Senate, has some of its own internal difficulties, because the Commerce Committee has jurisdiction in this area directly, we have it through the estuaries, through the Clean Air Act, through the Clean Water Act and through some of the public works programs that we supervise here. So there is a kind of a potential level of multiple confusion here at a time when we really can't afford it any longer.

So I very much look forward to working with you on that and helping to draw some clear policy out of all the administrative confusion.

Ms. SUTLEY. I look forward to working with you on that, Senator. Thank you.

Senator BOXER. Well, you will be really relieved to know that I think this says the Senators have confidence in the selection of you to have this position, which is a wonderful thing to know. And the same we said to Lisa Jackson, we are going to send you some written questions. And we need to have them back by Friday noon, so that we can move your nomination forward. The hope is to discharge from the Committee, bring it right to the floor for a vote.

Do I have your commitment to get that done?

Ms. SUTLEY. Yes, Madam Chair.

Senator BOXER. Excellent.

Well, we thank you, Nancy, very much, and we thank your family for standing by all these many hours. We thank everyone who was here since early morning for their patience.

I think we are on a new road, a much better road, and the American people will be better off because of that road, they will be

much better off because of Nancy Sutley and Lisa Jackson. I am convinced of that.

Thank you very much. We stand adjourned.

[Whereupon, at 2:27 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

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**FOR IMMEDIATE RELEASE**

**ENGINE MANUFACTURERS READY TO IMPLEMENT 2010 HEAVY-DUTY  
VEHICLE EMISSIONS STANDARDS**

CHICAGO, IL, November 20, 2008 – The Engine Manufacturers Association (EMA) today affirmed that its members are on schedule and ready to meet EPA’s stringent 2010 emission standards for heavy-duty engines. Engine manufacturers have invested heavily in engineering technological solutions and design changes to meet the new NOx emission standard that is required for 2010 model-year engines and see no technological barriers to meeting the standard.

“All engine and vehicle manufacturers will have product available to meet the applicable emissions standards when 2010 models are introduced,” said Jed Mandel, EMA President. “Engine manufacturers successfully brought compliant products to the market when the new emissions standards for PM and NOx were implemented in 2007, and our members are on track to meet the 2010 emissions standards as well. Fleet and truck owners can be confident that reliable, durable and fuel efficient vehicles meeting the 2010 emission standards will be available.”

Addressing current economic conditions and implementation of the 2010 standards, Mr. Mandel continued: “Fleet owners and operators are experiencing very tough times due to the current national economic conditions, as are engine and vehicle manufacturers. We also recognize that customers have questions regarding new and unfamiliar technology that will be required for 2010 vehicles, and that those uncertainties have the potential to impact new vehicle sales over the next couple of years. On those issues, EMA continues to support efforts to provide financial incentives to customers and early adopters of the 2010 technology as a way to assist fleet owners and to ensure that the anticipated emissions reduction benefits from the new technology are realized.”

The Engine Manufacturers Association is a trade association representing worldwide manufacturers of internal combustion engines used in applications such as trucks and buses, farm and construction equipment, locomotives, marine vessels, and lawn, garden and utility equipment. EMA works with government and industry stakeholders to help the nation achieve its goals of cleaner fuels, more efficient engines and cleaner air.

*Bringing Cleaner Power to the World Since 1968™*

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EMA is a Non Governmental Organization in Special Consultative Status with the Economic and Social Council of the United Nations

